Supreme Court, U.S.
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No. 03-1566

IN THE

Supreme Court of the United States

FRANCIS A. ORFF, *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 18, 2004
CERTIORARI GRANTED OCTOBER 12, 2004

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NOTICE

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Appendix to the Petition For A Writ Of Certiorari at the following pages:

Memorandum Opinion and Order Re: Federal Defendants' Motion to Reconsider, *Orff, et al. v. United States, et al.*, Case No. CV-F-93-5327, U.S. District Court for the Eastern District of California (April 12, 2000) 23a

Final Judgment, *Orff, et al. v. United States, et al.*, Case No. CV-F-93-5327, U.S. District Court for the Eastern District of California (August 11, 2000) 21a

Opinion, *Orff, et al. v. United States*, Case No. 00-16922, U.S. Court of Appeals for the Ninth Circuit (February 18, 2004) 1a

43 U.S.C. § 390uu 47a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

Case No. CV-F-93-5327

FRANCIS A. ORFF, *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
5/17/93	1	COMPLAINT referred to Magistrate Judge Sandra Snyder-Hylton Summons issued fee status paid; Receipt #151676; jury demand Notice re: Consent forms (rm) [Entry date 05/17/93] [1:93cv5327]
5/17/93	2	NOTICE by plaintiff of related case(s) CV-F-79-106-OWW and CV-F-81-245-OWW (rm) [Entry date 05/17/93] [1:93cv5327]
7/28/93	16	1st AMENDED COMPLAINT [1] by plaintiff; jury demand; adding plaintiffs San Benito Co Water, San Luis Water Dist, Panoche Water Dist, defendants DOI, Bur of Reclamation, Nat'l Marine Fisheries, Ronald H Brown, Bruce Babbitt (kd) [Entry date 07/28/93] [1:93cv5327]

DATE	NO.	PROCEEDINGS
9/8/93	28	STIPULATION and ORDER by Judge Oliver W. Wanger granting the filing and serving within 5 days, of complaint-in-intervention and adding Intervenor Kern Co Water Agcy (cc: all counsel) (kd) [Entry date 09/09/93] [1:93cv5327]
9/10/93	29	STIPULATION and ORDER by Judge Oliver W. Wanger permitting intervention of: adding Friant Water Users, Hills Valley Irrg, Pixley Irrg Rag Gulch Irrg Dist, Orange Cove Irrg Dist, Lindsay-Strathmore, Madera Irrg District, Chowchilla Water, Shafter-Wasco Irrg, Friant Power Authority (cc: all counsel) (kd) [Entry date 09/13/93] [1:93cv5327]
9/10/93	30	STIPULATION and ORDER by Judge Oliver W. Wanger permitting intervention: adding San Joaquin River Exchange Contractors Water Authority (cc: all counsel) (kd) [Entry date 09/13/93] [1:93cv5327]
9/16/93	33	MOTION to intervene by Area I Plaintiffs-in-intervention before Judge Wanger 10:00 10/18/93; MEMORANDUM of P/A in support thereof; DECLARATION of William M Smiland; and PROPOSED COMPLAINT of Plaintiffs-in-intervention attached as exhibit B (kd) [Entry date 09/17/93] [1:93cv5327]

DATE	NO.	PROCEEDINGS
10/4/93	40	RESPONSE by federal defendants DOI, Bur of Reclamation, USA, COMM in opposition to motion to intervene by Area I Plaintiffs-in-intervention (kd) [Entry date 10/05/93] [1:93cv5327]
10/5/93	42	BRIEF by intervenor-defendants regarding motion to dismiss complaints [41] (kd) [Entry date 10/05/93] [1:93cv5327]
10/19/93	52	REPLY by intervenor-plaintiffs to response to motion to intervene by Area I Plaintiffs-in-intervention [33] (kd) [Entry date 10/21/93] [1:93cv5327]
10/27/93	60	ORDER by Judge Oliver W. Wanger granting motion to intervene by Area I Plaintiffs-in-intervention [33]; Area I parties shall file their complaint on or before 10/27/93; opposition to motion to dismiss the Federal Defendants and Intervenors NRDC, et al ddl 11/11/93, reply ddl 11/24/93 (cc: all counsel) (kd) [Entry date 10/29/93] [1:93cv5327]
10/27/93	61	INTERVENOR'S COMPLAINT by intervenor-plaintiffs, (kd) [Entry date 10/29/93] [1:93cv5327]
12/14/93	91	STIPULATION and ORDER by Judge Oliver W. Wanger that in the event Water Users are successful in their challenge to the USA authority to assess these charges, the USA, at the discretion of the Secretary of the Interior, shall either: 1) credit payments already made by Water Users against Water Users' respective shares of the then unpaid

DATE	NO.	PROCEEDINGS
		capital costs of the Central Valley Project, or 2) immediately repay such assessments and charges to Water Users, without requiring them to make administrative claim for such repayment. (cc: all counsel) (kd) [Entry date 12/16/93] [1:93cv5327]
3/4/94	119	AMENDED COMPLAINT [61] of Area I plaintiffs-in-intervention Francis A Orff, Brooks Farms II, et al (kd) [Entry date 03/08/94] [1:93cv5327]
3/4/94	120	2nd AMENDED COMPLAINT [16] by plaintiffs Westlands Water Dist,. San Benio Co Water Dist, San Luis Water Dist, Panoche Water Dist; jury demand; adding DOI (kd) [Entry date 03/08/94] [Edit date 04/18/94) [1:93cv5327]
5/19/94	228	ORDER by Judge Oliver W. Wanger re preliminary injunction and bond, that the Federal defendants and those acting for, are enjoinied from implementing Section 3406(b)(2) and 3406(d)(1) for the CVPIA, until NEPA compliance has been achieved or doing any activity which would have substantially the same effect: This injunction is not intended to affect any of the Federal Defendants' pre-CVPIA obligations for CVP water. Further Ordered that plaintiffs shall post as security, the sum of $100,000.00, to be deposited with the Clerk of the Court (cc: all counsel) (kd) [Entry date 05/20/94] [1:93cv5327]

DATE	NO.	PROCEEDINGS
6/1/94	252	NOTICE OF APPEAL from Dist. Court decisions filed 4/28/94 and 5/19/94 (fee status: paid) (cb) [Entry date 06/07/94) [1:93cv5327]
6/2/94	254	NOTICE OF APPEAL by intervenor-defendant -NRDC from Dist. Court decision (fee status: billed) (cb) [Entry date 06/07/94] [1:93cv5327]
6/27/94	268	ORDER by Judge Wanger denying motion for stay pending appeal by environmental intervenors [237], denying motion for modification of preliminary injunction by Grassland Water Dist and Resource Conservation Dist [235], granting motion to intervene as defendants is granted, leave to appear as amicus curiae in this action by Grassland Water Dist and Grassland Resource Conservation Dist denied [231], denying application for stay [230] (cc: all counsel) (sd) [Entry date 06/28/94] [1:93cv5327]
10/31/94	319	MOTION for summary judgment by Friant Intervenors Hearing 1/9/95 10:00 #2 (sd) [Entry date 11/01/94] [1:93cv5327]
11/1/94	325	MOTION for summary judgment or in the alternative summary adjudication by intervenor Exchange Contractors' Hearing 1/9/95 9:00 #2 (sd) [Entry date 11/01/94) [1:93cv5327]

DATE	NO.	PROCEEDINGS
11/1/94	329	MOTION for partial summary judgment by Kern County Water Agency Hearing 1/9/95 9:00 #2 (sd) [Entry date 11/01/94] [1:93cv5327]
11/1/94	337	MOTION for summary judgment/summary adjudication by plaintiff in intervention County of Fresno Hearing 1/9/95 10:00 #2 (sd) [Entry date 11/02/94] [1:93cv5327]
11/1/94	345	MOTION for judgment on the pleadings or summary judgment on ESA and CVPIA defenses to reclamation claims, meo P/A in support thereof by Area I Plaintiffs-in-Intervention Hearing 1/9/95 9:00 #2 (sd) [Entry date 11/02/94] [1:93cv5.327]
11/1/94	346	MEMORANDUM OF POINTS AND AUTHORITIES OF AMICUS CURIAE in support of plaintiffs' motion for summary judgment by San Joaquin Valley Unified Air Pollution Control District (sd) [Entry date 11/02/94] [1:93cv5327]
12/1/94	361	RESPONSE by intervenor-defendant Invironmental in 1:93-cv-05327 to motion for summary judgment by intervenors Friant Water Users Authority [350-1], to motion for summary judgment/summary adjudication by plaintiff in intervention County of Fresno [349-1], to motion for partial summary judgment by Kern County Water Agency [336-1], to motion for partial summary judgment by Kern County Water Agency [329-1], to motion for summary judgment or in the alternative summary adju-

DATE	NO.	PROCEEDINGS
		dication by intervenor Exchange Contractors' [325-1], to motion for judgment on the pleadings or summary judgment on ESA and CVPIA defenses to reclamation claims, meo P/A in support thereof by Area I Plaintiffs-in-Intervention [345-1] (sc) (Entry date 12/02/94] [1:93cv5327]
12/5/94	367	RESPONSE by Federal defendants to-motion for judgment on the pleadings or summary judgment on ESA and CVPIA defenses to reclamation claims, meo. P/A in support thereof by Area I Plaintiffs-in-Intervention [345-1] (sc) (Entry date 12/05/94] [1:93cv53271
12/16/94	378	REPLY by federal intervenor-defendants USA, Fish and Wildlife, DOI, and Bur of Reclamation opposition to motion for judgment on the pleadings or summary judgment on ESA and CVPIA defenses to reclamation claims, meo P/A in support thereof by Area I Plaintiffs-in-Intervention [345-1] (pa) [Entry date 12/16/94] [1:93cv5327 1:93cv5896 1:94cv6103 1:94cv6131]
12/19/94	384	REPLY by amicus San Joaquin Val Unif in 1:93-cv-05327 to response to motion for summary judgment by intervenors Friant Water Users Authority. [350-1], motion for summary judgment/summary adjudication by plaintiff in intervention County of Fresno [349-1], motion for partial summary judgment by Kern County Water Agency [336-1], motion for partial summary judgment by Kern County Water Agency [329-1], motion

DATE	NO.	PROCEEDINGS
		for summary judgment or in the alternative summary adjudication by intervenor Exchange Contractors' [325-1], motion for judgment on the pleadings or summary judgment on ESA and CVPIA defenses to reclamation claims, meo P/A in support thereof by Area I Plaintiffs-in-Intervention [345-1] (sc) [Entry date 12/21/94] [1:93cv5327]
12/19/94	385	RESPONSE by plaintiff in 1:93-cv-05327 to motion for partial summary judgment by Kern County Water Agency' [336-1], to motion for partial summary judgment by Kern County Water Agency [329-1], (sc) [Entry date 12/21/94] [1:93cv5327]
12/19/94	386	MEMORANDUM by intervenor Friant Water Users in 1:93-cv-05327 in support of motion for summary judgement [350-1] (sc) [Entry date 12/21/94] [1:93cv5327]
12/20/94	387	REPLY by intervenor-plaintiff Francis A Orff to response In OPPOSITION by Government and Delta Interests to motion for judgment on the pleadings or summary judgment on ESA and CVPIA defenses to reclamation claims, meo P/A in support thereof by Area I Plaintiffs-in-Intervention [345-1] (pa) [Entry date 12/22/94] [1:93cv5327]

DATE	NO.	PROCEEDINGS
12/20/94	398	MEMORANDUM by intervenor-plaintiff San Joaquin River in support of motion for summary judgement or in the alternative partial summary judgement on claims [397-1] (sc) [Entry date 01/04/95] [1:93cv5327]
12/27/94	389	RESPONSE by intervenor-plaintiff San Joaquin River in 1:93-cv-05327 to motion for summary judgment/summary adjudication by plaintiff in intervention County of Fresno [349-1], to motion for partial summary judgment by Kern County Water Agency [336-1], to motion for partial summary judgment by Kern County Water Agency [329-1], to motion for summary judgment or in the alternative summary adjudication by intervenor Exchange Contractors' [325-1] (sc) [Entry date 12/29/94] [1:93cv5327]
12/29/94	392	RESPONSE brief in opposition to motion to amend supplemental scheduling order by defendant USA (motion attached in exhibits filed 11/1/94) (sc)
12/30/94	397	MOTION by intervenor-plaintiff San Joaquin River for summary judgment or in the alternative partial summary judgement on claims motion to-be heard by Judge Oliver W. Wanger 2/27/95 at 9:00 (sc) [Entry date 01/04/95] [1:93cv5327]

DATE	NO.	PROCEEDINGS
12/30/94	401	MOTION by intervenor-plaintiff Francis A Orff for summary judgment, for judgment on the pleadings motion to be heard by Judge Oliver W. Wanger, hearing set for 2/27/95 at 9:00 (sc) [Entry date 01/04/95] [1:93cv5327]
1/20/95	419	MEMORANDUM of P/A by intervenor-plaintiff San Joaquin River in support of [397-1] motion for summary judgment and partial motion for summary judgment (lm) [Entry date 01/25/95] [Edit date 01/25/95] [1:93cv5327]
2/21/95	428	CERTIFIED COPY of judgment from 9th Circuit appeal [271-1], appeal [254-1], appeal [252-1] Judgment of said District Court in this cause the temporary injunction is VACATED.(cc: all counsel) (pa) [Entry date 02/21/95] [1:93cv5327]
5/23/95	439	STIPULATION AND ORDER by Judge Oliver W. Wanger dismissing ESA claims and complaints-in-intervention (cc: all counsel) (gl) [Entry date 05/25/95] [1:93cv5327]
9/6/95	442	MOTION to dismiss complaint by plaintiffs before Judge Wanger 10/2/95 10:00 (rm) [Entry date 09/08/95] [Edit date 09/08/95] [1:93cv5327]
10/16/95	452	RESPONSE by intervenor-plaintiff to motion to dismiss complaint by plaintiffs before Judge Wanger [442-1] (gl) [Entry date 10/18/95] [1:93cv5327]

DATE	NO.	PROCEEDINGS
10/23/95	455	REPLY by pltf's Westlands Water Dist and San Benito Co Water regarding motion to dismiss complaint [442-1] (hl) [Entry date 10/24/95] [1:93cv5327]
11/6/95	463	MEMORANDUM, Opinion and Order: by. Judge Wanger GRANTING motion to dismiss complaint by plaintiffs [442-1]; Westland's counsel shall prepare an order of conformity with this memorandum with court within 5 days of service of this opinion (cc: all counsel). (hl) [Entry date 11/08/95] [1:93cv5327]
11/14/95	465	SECOND AMENDED COMPLAINT by Area 1 plaintiff (hl) [Entry date 11/16/95] [1:93cv5327]
1/11/96	484	MOTION for partial summary judgment on pleadings or summary judgment on claims for water year 1993-1994 by Area 1 pltf's before Judge Manger 9:00 3/4/96 #2; memorandum of P&A in support thereof (hl) (Entry date 01/12/96] [Edit date 01/12/96] (1:93cv5327]
1/11/96	485	MOTION for partial summary judgment or summary judgment on claims for water year 1994-1995 by Area 1 pltf's before Judge Wanger 9:00 3/4/96 #2; memorandum of P&A in support thereof (hl) [Entry date 01/12/96] [1:93cv5327]

DATE	NO.	PROCEEDINGS
3/11/96	498	RESPONSE by intervenor's Natural Resources in opposition to motion for partial summary judgment or summary judgment on claims for water year 1994-1995 by Area 1 pltf's [485-1] to motion for partial summary judgment on pleadings or summary judgment on claims for water year 1993-1994 by Area 1 pltf's [484-1] (hl) (Entry date 03/12/96) [1:93cv5327]
3/11/96	501	RESPONSE by intervenor-defendant USA in 1:93-cv-05327 in oppsotion to motion for partial summary judgment or summary judgment on claims for water year 1994-1995 by Area 1 pltf's [485-1] and in support of deft's motion for summary judgment (hl) [Entry date 03/13/96] [1:93cv5327]
4/1/96	505	REPLY by Area 1 pltf's to Govt's nad intervenor's response in opposition to motion for partial summary judgment or summary judgment on claims for water year 1994-1995 by Area 1 pltf's [485-1] (hl) [Entry date 04/02/96] [1:93cv5327]
4/1/96	506	RESPONSE by Area I pltf's Federal deft's motions for summary judgment for water year 1994-1995 by Area 1 pltf's [485-1] and motion for partial summary judgment on pleadings or summary judgment on claims for water year 1993-1994 by Area 1 pltf's [484-1] (hl) [Entry date 04/02/96]. [1:93cv5327]

DATE	NO.	PROCEEDINGS
4/2/96	504	REPLY by Area 1 pltf's to Govt and Intervenor's response in opposition to motion for partial summary judgment on pleadings or summary judgment on claims for water year 1993-1994 by Area 1 pltf's [484-1] (hl) [Entry date 04/02/96] [1:93cv5327]
4/8/96	507	Reply BRIEF by intervenor-defendant USA support of federal deft's, motion for summary judgment [485-1], [484-1] (hl) [Entry date 04/09/96] [1:93cv5327]
4/12/96	508	RESPONSE in opposition by Area I plaintiffs to motion to strike by Intervenor Natural Resources [499-1] (rm) [Entry date 04/15/96] [Edit date 04/15/96] [1:93cv5327]
2/3/97	535	SUPPLEMENTAL BRIEF by plaintiff Francis A. Orff re: impact on pending cross-motions 1:93-cv-05327 (mh) [Entry date 02/04/97] [1:93cv5327]
2/14/97	538	RESPONSE by federal defts in 1:93-cv-05327 to pltfs' supplemental brief [535-1]. (mh) [Entry date 02/18/97] [1:93cv5327]
2/18/97	539	BRIEF by-intervenor Natural Resources, intervenor-defendant Invirorimental re United States v Winstar (lm) [Entry date 02/19/97] [1:93cv5327]
2/28/97	544	REPLY brief by plaintiff Francis A Orff in 1:93-cv-05327 (mh) [Entry date 03/03/97] [1:93cv5327]

DATE	NO.	PROCEEDINGS
4/24/97	548	MEMORANDUM, Opinion and Order: by judge Oliver W. Wanger motion to strike undisputed facts by plaintiffs [499-1] DENIED, motion for summary judgment re 1994-1995 [485-1], 1993-1994 water year [484-1] DENIED (cc: all counsel) (il) [Entry date 04/25/97] [1:93cv5327]
5/30/97	558	MOTION for reconsideration by defendant USA in 1:93-cv-05327 motion TO BE HEARD by Judge Oliver W. Wanger Motion Hearing Set For 7/8/97 at 10:00 (il) [Entry date 05/30/97] [1:93cv5327].
5/30/97	560	MOTION for clarification/reconsideration, and for partial summary judgment by intervenor Natural Resources in 1:93-cv-05327 motion TO HEARD by Judge Oliver W. Wanger, Motion Hearing Set For 7/8/97 at 9:00 (il) [Entry date 05/30/97] [1:93cv5327]
5/30/97	562	MOTION for clarafication/reconsideration by plaintiff Francis A Orff in 1:93-cv-05327 motion TO BE HEARD by Judge Oliver Wanger; Motion Hearing Set For 7/8/97 (il) [Entry date 05/30/97] (1:93cy5327]
6/13/97	564	RESPONSE by intervenor Natural Resources in 1:93-cv-05327 to motion for clarafication/reconsideration by plaintiff Francis A Orff in 1:93-cv-05327 [562-1] (lm) [Entry date 06/16/97] [1:93cv5327]

DATE	NO.	PROCEEDINGS
6/13/97	565	MEMORANDUM of P/A by defendant USA in 1:93-cv-05327 in opposition to plaintiffs' motion for clarification and reconsideration of the court's 4/23/97 memorandum opinion [562-1] (lm) [Entry date 06/16/97] [1:93cv5327]
6/20/97	566	MEMORANDUM. of P/A by intervenor-defendant USA in support of motion for reconsideration (562-1], [560-i] (lm) [Entry date 06/20/97] [1:93cv5327]
6/20/97	567	REPLY BRIEF'by plaintiff Orff et al. in 1:93-cv-05327 regarding dft's opposition to pltf's motion for reconsideration [564-1] (fg) [Entry date 06/23/97] [1:93cv5327]
6/24/97	568	BRIEF by intervenor Natural Resources in 1:93-cv-05327 in support of motion for reconsideration, clarification and partial summary judgment [560-1], [560-2] (lm) [Entry date 06/24/97 [1:93cv5327]
8/29/97	574	NOTICE of points and authorities on the issue of whether 43 USC 390uu provide: subject matter jurisdiction for this Court to hear pltfs claims by defendant USA (rah) [Entry date 09/02/97] (1:93cv5327]
9/3/97	575	RESPONSE by plaintiff Francis A Orff to governments brief re jursidiction [574-1] (mli) (Entry date 09/04/97] [1:93cv5327]

DATE	NO.	PROCEEDINGS
6/4/98	587	STIPULATION AND ORDER by Judge Oliver W. Wanger party Grassland Resource in 1:93-cv-05327, party Grassland Water Dist in 1:93-cv-05327 DISMISSED; (cc: all counsel) (sr) (Entry date 06/04/98] [1:93cv5327].
6/5/98	588	MEMORANDUM, Opinion and Order: by Judge Oliver W. Wanger motions for clarafication/reconsideration [562][560] [558] GRANTED in part and DENIED in part; motion for partial summary judgment by intervenor Natural Resources in [560] GRANTED in part and DENIED in part, (cc: all counsel) (gl) [Entry date 06/09/98] [1:93cv5327]
8/14/98	597	ORDER by Judge Oliver W. Wanger re plaintiffs' motions for clarification and reconsideration of the Court's 4/24/97 memorandum opinion; Federal defts' and Environmental intervenors' motions for reconsideration of the Court's 4/24/97 memorandum opinion and for summary judgment [588-1] (cc: all counsel) (il) [Entry date 08/17/98] [1:93cv5327]
9/2/98	600	Memorandum of Points and Authorities in Opposition by intervenor-defendant USA to motion to intervene pursuant to Rules 24(a) and or 24(b) of the FRCP by plaintiff Westlands Water Dist 1:93-cv-05327, [595-1] (ii) (Entry date 09/03/98] [1:93cv5327]

DATE	NO.	PROCEEDINGS
9/14/98	603	RESPONSE in SUPPORT by pltf Francis A Orff to motion to intervene pursuant to Rules 24(a) and or.24(b) of the FRCP by plaintiff Westlands Water Dist in 1:93-cv-05327 to case(s) 1:93-cv-05327, [595-1] (jv) [Entry date 09/15/98] [1:93cv5327]
9/14/98	604	MEMORANDUM in OPPOSITION by intervenor Natural Resources to motion to intervene pursuant to Rules 24(a) and or 24(b) of the FRCP by plaintiff Westlands Water Dist [595-1] (jv) [Entry date 09/15/98] [1:93cv5327]
9/24/98	606	REPLY by intervenor Westlands Water District to dfts' and Environmental intervenors' memoranda of points. and authorities in opposition to motion to intervene pursuant to Rules 24(a) and or 24(b) .of the FRCP by plaintiff Westlands Water Dist [595-1] (tw) [Entry date 09/25/98] [1:93cv5327]
9/28/98	607	MINUTES of 9/28/98 before Judge Wanger motion to intervene pursuant to Rules 24(a) and or 24(b) of the FRCP by plaintiff Westlands Water Dist [595-1] RESOLVED C/R P Smith (mm) [Entry date 09/29/98] [Edit date 09/29/98] [1:93cv5327]
11/3/98	610	STIPULATION AND ORDER by Judge Wanger motion to intervene pursuant to Rules 24(a) and or 24(b) of the FRCP by plaintiff Westlands Water Dist [595-1] WITHDRAWN (cc: all counsel) (mm) [Entry date 11/03/98] [1:93cv5327].

DATE	NO.	PROCEEDINGS
1/22/99	612	NOTICE OF MOTION AND MOTION for order modifying memorandum opinion dated 6/5/98 by intervenor Westlands Water Dist to be heard before Judge Wanger Motion Hearing Set For 9:00 2/22/99 (jv) [Entry date 01/25/99] [Edit date 01/25/99] [1:93cv5327]
1/22/99	614	MOTION to modify that part of the court's memorandum opinion nad order holding that pltfs have standing to sue the federal dfts under 43 USC 390uu with re to claims arising under contracts between Estlands and-the US by federal dfts USA, Bur of Reclamation, COMM, Natl Marine Fish, Ronald H Brown, Bruce Babbitt to be heard before Judge Wanger Motion Hearing Set For 9:00 2/22/99 ctrm 2 (document submitted as "memorandum in support of motion to modify. . .") (jv) [Entry date 03/05/99] [Edit date 03/05/991 [1:93cv5327]
1/25/99	615	NOTICE OF MOTION AND MOTION for clarification or for interlocutory appeal by intervenor Natural Resources in 1:93-cv-05327 to be heard before Judge Wanger Motion Hearing Set For 9:00 2/22/99. (jv) [Entry date 01/26/99] [1:93cv5327]
2/4/99	619	RESPONSE of non-opposition by intervenor Natural Resources to motion for order modifying memorandum opinion dated 6/5/98 by intervenor Westlands Water District [612-1] (did) [Entry date 02/05/99] [1:93cv5327]

DATE	NO.	PROCEEDINGS
3/4/99	623	RESPONSE in OPPOSITION by Area I pltfs to motion to modify that part of the court's memorandum opinion nad order holding that pltfs have standing to sue the federal dfts under 43 USC 390uu with re to claims arising under contracts between Estlands and the US by federal dfts USA, Bur of Reclamation, COMM, Natl Marine Fish, Ronald H Brown, Bruce Babbitt to be heard before' Judge Wanger [614-1] (jv) [Entry date 03/05/99] [1:93cv5327]
3/4/99	624	RESPONSE in OPPOSITION by Area I pltfs to motion for clarification or for interlocutory appeal by intervenor Natural Resources in 1:93-cv-05327 to be heard before Judge Wanger [615-1] (jv) [Entry date 03/05/99] [1:93cv5327]
3/17/99	625	REPLY by defendant USA in 1:93-cv-05327 regarding motion to modify that part of the court's memorandum opinion and order holding that pltfs have standing to sue the federal defs under 43USC390uu with regard to claims arising under contracts between westlands and the united states; memorandum in support; [615-1] (aa) [Entry date 03/18/99)
3/18/99	626	REPLY by intervenor-defendant Inviron-mental in response to motion for clarification or-for interlocutory appeal by intervenor Natural Resources in 1615-1] (aa) [Entry date 03/19/99] [1:93cv5327]

DATE	NO.	PROCEEDINGS
4/30/99	628	MEMORANDUM, Opinion and Order: by Judge Oliver W. Wanger motion to modify June 5, 1998 memorandum opinion is granted; it is ordered that the following sentence, p.19, line 10-11, is deleted from the June 5, 1998 decision; Any judgment will bind Westlands and Westlands members, including plaintiffs; [588-1] (cc: all counsel) (aa) [Entry date 05/04/99] [1:93cv5327]
9/27/99	633	MEMORANDUM, Opinion and Order: by Judge Oliver W. Wanger motion for clarification or for interlocutory appeal by intervenor Natural Resources in 1:93-cv-05327 to be heard before Judge Wanger (615-1] DENIED (cc: all counsel) (sr) [Entry date 09/28/99] [1:93cv5327]
4/12/00	634	MEMORANDUM, Opinion and Order: by Judge Oliver W. Wanger re motion to modify that part of the court's memorandum opinion nad order holding that pltfs have standing to sue the federal dfts under 43 USC 390uu with re to claims. arising under contracts between Westlands and the US by federal dfts USA, Bur of Reclamation, COMM, Natl Marine Fish, Ronald H Brown, Bruce; Babbitt [614-1] case mgmt ddl set for 5/1/00 for Area I pltf's to notify the court whether they wish their money damgaes claims. transferred to court of claims; case mgmt ddl seft for 5/1/00 for

DATE	NO.	PROCEEDINGS
		Federal defts shall submit a prepareed order that conforms to the decision (cc: all counsel) (hl) [Entry date 04/12/00] [Edit date 04/12/00] [1:93cv5327]
6/16/00	640	MEMORANDUM, Opinion and Order: by Judge Oliver W. Wanger Plaintiff's motion to vacate the Court's 04/12/00 memorandum is DENIED; plaintiff shall notifiy the court whether they wish this case transferred to the court of claims case mgmt ddl set for 6/27/00 (cc: all counsel) (rab) [Entry date 06/19/00] [1:93cv5327]
7/18/00	646	SUPPLEMENTAL STATEMENT by defendant USA re Orff pltfs request to certify issue of standing and to stay remaining portion of this case (sr) [Entry date 07/19/00] [1:93cv5327]
7/27/00	647	OBJECTIONS by Area I plaintiffs in 1:93-cv-05327 to USA's proposed final judgment (sr) [Entry date 07/28/00] [1:93cv5327]
7/31/00	648	RESPONSE by intervenor-defendant USA in 1:93-cv-05327 to Area 1 pltf's objections to U.S. proposed final judgment [647-1] (hl) [Entry date 08/01/00] [1:93cv5327]
8/10/00	650	MEMORANDUM, Opinion and Order: by Judge Oliver W. Wanger objections [647-1] are OVERRULED and motion for reconsideration is DENIED (cc: all counsel) (hl) (Entry date 08/11/00] [1:93cv5327]

DATE	NO.	PROCEEDINGS
8/11/00	651	FINAL JUDGMENT by Judge Oliver W. Wanger in favor of Federal defts and Environmental Intervenors and against pltf's; all claims have been resolved case TERMINATED (cc: all counsel) (hi) [Entry date 08/11/00] [1:93cv5327]
10/4/00	652	NOTICE OF APPEAL from District Court decision re judgment [651-2] (fee status paid receipt no 191242) (rab) [Entry date 10/04/00] [1:93cv5327]
10/17/00	657	NOTICE OF APPEAL by plaintiff Westlands Water Dist in 1:93-cv-05327 from District Court decision re judgment [651-2] (fee status paid) (hl) [Entry date 10/18/00] [1:93cv5327]

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Docket No. 00-16922

FRANCIS A. ORFF, *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA, *et al.*,
Respondents.

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
10/13/00	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): NO. setting schedule as follows: appellant's designation of RT is due 10/16/00; appellee's designation of RT is due 10/24/00; appellant shall order transcript by 11/3/00; court reporter shall file transcript in DC by 12/4/00; certificate of record shall be filed by 12/11/00; appellant's opening brief is due 1/22/01; appellees' brief is due 2/20/01; appellants' reply brief is due 3/5/01. [00-169221 (crw) [00-16922]
1/5/01	Filed aplts' response opposing dispositive motion to dismiss appeal of intervening aplt Westlands Water District in 00-17029 [4049750-1] served on 1/4/01 (CONFAT) [00-16922, 00-17029] (dg) [00-16922 00-17029]

DATE	PROCEEDINGS
1/10/01	Received Appellant Westlands Water Dist in 00-17029's addendum to opposition to Federal aples' motion to dismiss appeal (amended proof of service) served on 1/9/01 CONFAT [00-17029, 00-16922] (em) [00-16922 00-17029]
4/30/01	Filed Westlands Water Dist's motion to intervene; served on 4/27/01 [4157663] (MOATT) [00-16922] (dg) [00-16922]
5/23/01	Filed order (Ferdinand F. FERNANDEZ, Kim M. WARDLAW): The unopposed motion of Westlands Water Dist to intervene in this appeal is granted. The clerk shall enter Westlands on the docket as plaintiff-intervenor. [4157663-1] The briefing is amended as follows: Intervenor's brief due 6/8/01; appellees' brief due 8/10/01; the reply brief is due 14 days from sery of aple's brief. [00-16922] (dg) [00-16922]
6/25/01	Filed original and 15 copies aplts' opening brief (Informal: n) 55 pages; 5 excerpts of record (2 Exc.vol); served on 6/22/01 (minor defcy: need copies of DC order; NOA and DC docket. Notified counsel. [00-16922] (em) [00-16922]
6/25/01	Filed original and 15 copies Intervenor in 00-16922's brief, 51 pages; 5 FOR in 2 vols.; served on 6/22/01 with minor defcy need statement of rel cases; cover to reflect Westland as Pltf-intervenor; not aplt. Notified counsel [00-16922] (em) [00-16922]
6/25/01	Filed Appellants' motion to take judicial notice, served on 6/22/01 [4201695] (RECORDS FOR MERITS PANEL**********) [00-16922] (dg) [00-16922]

DATE	PROCEEDINGS
6/27/01	Filed orig & 5 pltfs-aplts' supplemental excerpts of record on appeal in 1 volume; (Vol.3) RECORDS (em) [00-16922]
6/27/01	Filed order (Deputy Clerk: lkk) Aplts' request that the court take judicia! notice, any related filings, any further request for judicial notice shall all be referred to the panel that shall decide the merits of the appeal. [4201695-1] [00-16922] (dg) [00-16922]
7/13/01	[4209700] Filed aplts' motion to dismiss intervenors-aples as parties on appeal; served on 7/12/01. [00-16922] (to CONFATT per their request) (dg) [00-16922]
7/24/01	Filed response opposing dispositive motion to dismiss parties [4209700-1] served on 7/23/01 (CONFAT) [00-16922] (dg) [00-16922]
8/16/01	Filed Appellees Natural Resources De, et al response opposing motion to dismiss parties [4209700-1] served on 8/16/01 (MOATT) [00-16922] (dg) [00-16922]
8/24/01	Filed Appellants' reply to response to motion to dismiss parties [4209700-1]; served on 8/23/01 (MOATT) [00-16922] (dg) [00-16922]
7/25/02	Filed order (Appellate Commissioner) denying dispositive motion to dismiss parties [4209700-1] setting schedule as follows: Aples and intervenors-aples shall each file an answering brief by 8/30/02; the reply brief is due within 14 days after serv of aples' brief. (MOATT) [00-16922] (dg) [00-16922]

DATE	PROCEEDINGS
9/16/02	Filed original and 15 copies Federal appellees' 53 pages brief; served on 9/13/02 [00-16922] (dg) [00-16922]
11/12/02	Received Appellants' second supplemental excerpts of record on appeal in 1 volumes. (hold & file with reply brief) (dg) [00-16922]
11/22/02	Filed original and 15 copies reply brief, (Informal: no) 55 pages; served on 11/21/02 [00-16922] (dg) [00-16922]
2/18/04	FILED OPINION: AFFIRMED IN PART, VACATED IN PART, all parties to bear their own costs. (Terminated on the Merits after Oral Hearing; Affirmed (in part) and Reversed (in part); Written, Signed, Published. John T. NOONAN, judge; Sidney R. THOMAS; Richard R. CLIFTON, author) FILED AND ENTERED JUDGMENT. [00-16922] (gva) [00-16922]
4/13/04	MANDATE ISSUED [00-16922] (dg) [00-16922]
5/25/04	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 03-1566 filed on 5/18/04. [00-16922] (dg) [00-16922]
10/18/04	Received notice from Supreme Court, petition for certiorari GRANTED on 10/12/04. Supreme Court No. 03-1566 (CASEFILE) [00-16922] (sf) [00-16922]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

No. CV-F 93-5327 OWW/SSH
HON. OLIVER W. WANGER

FRANCIS A. ORFF, *et al.*,
Plaintiffs,

v.

UNITED STATES OF AMERICA, *et al.*,
Defendants.

The following documents were attached to pleadings filed in the above court.

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

Contract No.
14-06-200-495-A
June 5, 1963

CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT PROVIDING FOR WATER SERVICE

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

Contract No.
14-06-200-495-A

CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT PROVIDING FOR WATER SERVICE

THIS CONTRACT, made this 5th day of June, 1963, in pursuance generally of the Act of June 17, 1902 (32 Sta. 388), and acts amendatory thereof or supplementary thereto, all collectively hereinafter referred to as the Federal reclamation laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and WEST-LANDS WATER DISTRICT, hereinafter referred to as the District, a political subdivision of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business in Fresno, California,

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, the United States is constructing and operating the Federal Central Valley Project for the purpose, among others, of furnishing water for irrigation, municipal, domestic, and other beneficial uses; and

WHEREAS, the United States is constructing the San Luis Unit of the Federal Central Valley Project which will be operated and used, in part, for the furnishing of water to the District pursuant to the terms of this contract; and

WHEREAS, the United States is providing an interceptor drain designed to meet the drainage requirements of the San Luis Unit of the Federal Central Valley Project; and

WHEREAS, investigations of the District lands and present water supply indicate that irrigated and irrigable lands within the boundaries of the District are at present in need of additional water for irrigation and certain areas have a potential need of water for irrigation, that ground water underlying the District is seriously depleted and in need of replenishment, and that an additional water supply to meet these present and potential needs can be made available by and through the works constructed and to be constructed by the United States; and

WHEREAS, the District desires to contract, pursuant to the Federal reclamation laws and the laws of the State of California, for the furnishing by the United States of a supplemental water supply from the Project and for drainage service by means of the interceptor drain for which the District will make payment to the United States upon the basis, at the rate, and pursuant to the conditions herein-after set forth; and

WHEREAS, investigations of the streamflow in the Sacramento River, the Trinity River, the American River, the San Joaquin River, and their tributaries indicate that there will be available for furnishing to the District from the San Luis Unit an additional water supply for surface diversion and direct application for irrigation and directly or indirectly to replenish depleted ground waters underlying the District;

NOW, THEREFORE, in consideration of the mutual and dependent covenents herein contained, it is hereby mutually agreed by the parties hereto as follows:

DEFINITIONS

1. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "Contracting Officer", shall mean the Secretary of the United States Depertmment of the Interior or his duly authorized representative;

(b) "Project" shall mean the Federal Central Valley Project, California, of the Bureau of Reclamation;

(c) "San Luis Unit" shall mean the facilities constructed pursuant to the Act of June 3, 1960 (74 Stet. 156);

(d) "interceptor drain" shall mean the physical works constructed by the United States pursuant generally to the Act of June 3,1960 (74 Stat. 156), in order to meet the drainage requirements of the area served by the ban Luis Unit which have been calculated to be one hundred and fifty thousand (150,000) acre-feet per year at a maximum rate of flow of two hundred and fifty (250) cubic feet per second. Such physical works shall not include those facilities necessary for the collection, conveyance, and discharge of drain water for disposal by the interceptor drain;

(e) "initial delivery date" shall mean the date announced by the Contracting Officer when water from the San Luis Unit first will be available for furnishing by the United States pursuant to this contract;

(f) "year" shall mean the period January 1 through December 31;

(g) "newly irrigated land" shall mean land that has not produced an irrigated crop during the five (5) years immediately previous to the initial delivery date;

(h) "agricultural use" shall mean use of water primarily in the commercial production of agricultural crops or

livestock including domestic use incidental thereto on tracts of land operated in units of two (2) acres or more.

TERM OF CONTRACT

2. This contract shall be effective on the date first hereinabove written and shall remain in effect for a period of forty (40) years commencing with the year in which the earliest initial delivery date of the long-tern contracts for water service from the San Luis Unit shall occur: Provided, That if within five (5) years commencing with the year in which the initial delivery date of this contract occurs the District has not constructed distribution facilities of adequate capacity to serve all of the irrigable lands of the District, this contract shall at the option of the Contracting Officer terminate on the last day of December in said 5th year, except that if such facilities are under construction at the end of said period the Contracting Officer may, at his option, extend said period from ye to year to permit completion of said facilities: Provided further, That under terms and conditions mutually agreeable to the parties hereto, renewals of this contract for furnishing water for agricultural use ma be made for successive periods not to exceed forty (40) years each. The terms and conditions of each renewal shall be agreed upon not later than one (1) year prior to the expiration of the then existing contract: And provided, further, That upon written request by the District of the Secretary not later than one (1) year prior to the expiration of this contract, whenever, account being taken of the amount then credited to the cost of construction of water supply works allocated to irrigation, the retaining amount of costs so allocated which is properly assignable for ultimate return by the District as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public Law 643 (70 Stat. 483) probably can be repaid to the United States within the tern of a contract under subsection (d), Section 9 of the 1939 Reclamation Project Act (53 Stat. 1187), this contract for the furnishing of water for agricultural

use may be converted to a contract under said subsection (d) upon terms and conditions mutually agreeable to the United States and the District.

WATER TO BE FURNISHED TO DISTRICT—
USE OF INTERCEPTOR DRAIN

3. (a) each year for a period of five (5) years, commencing with the year in which the initial delivery date occurs, the t1nnit6d State: shall furnish to the District end the District etch such year shall accept and pay, as provided in Article 6 hereof, for water from the San Luis Unit in the quantities specified in the schedule or any revision thereof submitted by the District its accordance with subdivision (a) of Article 4 hereof for each such year: Provided, That the United Stats shall not be obligated to furnish more than one million eight thousand (1,008,000) acre-feet of water during any such year.

(b) Commencing with the 6th year and continuing through the 15th year the United States shall furnish to the District and the District shall accept and pay for, as provided in Article 6 hereof, four hundred thousand (400,000) acre-feet of water annually: Provided, That the District may at any time or times during the period described by this subdivision, by written notice furnished to the United States in advance, increase the quantity of water the United States shall furnish to the District and the District shall accept and pay for annually during said period, but in no event shall said annual quantity for the 6th year through the year 1979 exceed one million eight thousand (1,008,000) acre-feet and for the period commencing with the year 1980 and extending through the 15th year exceed seven hundred and eighty-three thousand (783,000) acre-feet plus such additional quantity as May be determined pursuant to subdivision (c) hereof. At any time during said period, the submission and approval of a schedule or any revision thereof pursuant to subdivision (a) of Article 4 hereof for water in excess of the quantity the

District is required to accept and pay for during that year shall constitute such a written notice.

(c) The maximum of seven hundred and eighty-three-thousand (783,000) acre-feet of water to be furnished to the District pursuant to subdivisions (b) and (d) hereof has been computed on the premise that by eliminating overdraft a safe yield of two hundred and twenty-five thousand (225,000) acre-feet of water of usable quality will be available each year for pumping within the District from the deep underground beneath what is generally referred to as the Corcoran clay at an estimated average depth of three hundred (300) feet, Prior to January 1, 1980, the United States and the District by joint studies shall review the validity of this estimate based on conditions existing after the initial delivery date. In the event, as a result of such joint studies, the parties determine upon a safe yield in a quantity less than two hundred and twenty-five thousand (225,000) acre-feet, the quantity of water to be furnished annually to the District pursuant to subdivision: and (d) hereof shall then be increased by the difference between send yield of two hundred and twenty-five thousand (225,000) acre-feet and the safe yield as determined by the joint studies; Provided, however, that such increase shall not exceed one hundred and seventeen thousand (117,000) acre-feet.

(d) Commencing the 16th year and each year thereafter during the remainder of the term of this contract, the United States shall furnish to the District for use on its eligible lands and the District eha11 accept and pay for, as provided in Article 6 hereof, seven hundred and eighty-three thousand (783,000) acre-feet, of water plus such additional quantity as may be determined pursuant to subdivision (c) hereof. If in any year during such period the District is unable to so use any part of such total quantity of water, the United States and the District by mutual agreement may reduce, by a quantity equal to that which the District was unable to so use, the

quantity of water which the United States is obligated to furnish and the District is obligated to accept and pay for during the remainder of the term of this contract.

(e) If in any year after the Contracting Officer has approved a schedule or any revision thereof submitted by the District the United States is unable to furnish any portion of the water in the quantities and at the times requested in the schedule and the District does not elect to receive and does not receive such water at other tires during such year, the District shell be entitled to an adjustment as provided in Article 7.

(f) The right to the beneficial use of water furnished to the District pursuant to the terns of this contract and any renewal hereof shall not be disturbed so long as the District shall fulfill all of its obligations under this contract and any such renewal.

(g) Drainage facilities of the District constructed in accordance with Article 13 hereof may be connected to the interceptor drain in such capacity and at such locations as may be mutually agreed upon between the District and the United States.

TIME FOR DELIVERY OF WATER

4. (a) Before January 1 of each year the District shall submit in writing to the Contracting Officer a schedule, subject to the provisions of Article 3 hereof and satisfactory in form and from an operational standpoint to the Contracting Officer, indicating the desired times and quantities for the delivery of all water pursuant to thin contract during such year. The United States shall within the provisions hereof attempt to deliver said water in accordance with said schedule or any revision thereof satisfactory to the Contracting Officer in form and from an operational standpoint submitted by the District within a reasonable time before the desired change of time or quantity, or both, for delivery as nearly as may

be feasible as conclusively determined by the Contracting Officer.

(b) If the District during any month is furnished a quantity of water in addition to that which it has requested for such month in its schedule and accepts such additional water, the District shall be deemed to have revised its schedule to call for such additional water during such month, and the United States shall be deemed to have accepted such revision as satisfactory. As soon thereafter as possible, the District shall submit a revised schedule to the United States for the remaining quantity to be delivered during that year.

(c) The District may at any time or time after the last day of September of any year request water to be furnished in excess of the quantity it is entitled to receive during any such year pursuant to Articles 3 and 8 hereof. Payment for the water so requested at the rate announced by the Contracting Officer pursuant to Article 6 hereof shall be made in advance of delivery of such water. The United States shall furnish such water in accordance with the schedule or any revisions thereof submitted by the District and approved by the Contracting Officer to the extent such water is available and to the extent such furnishing will not interfere with maintenance of or result in detriment to the Project. The quantity of water furnished pursuant to this sub-division shall be deducted from the quantity of water the United States would otherwise be obligated to furnish and the District obligated to accept and pay for during the next succeeding year. The amount paid by the District pursuant to this subdivision shall be deducted from the amount of the payment the District would otherwise be obligated to make during the next succeeding year.

USE OF WATER OUTSIDE THE DISTRICT

5. Water furnished to the District pursuant to this contract shall not be sold or otherwise disposed of for use outside the District without the written consent of the Contracting Officer.

RATE AND METHOD OF PAYMENT FOR WATER—DRAINAGE SERVICE

6. (a) Before December 15 of each year the Contracting Officer shall notify the District in writing of the rate of payment to be made by the District for water which the District is required to accept and pay for during the ensuing year pursuant to the provisions of Article 3 hereof. The rate so announced may not be in excess of Eight Dollars ($8) per acre-foot and shall include a drainage service component of not to exceed Fifty Cents ($0.50) for the interceptor drain and a water service component of not to exceed Seven Dollars and Fifty Cents ($7.50). The United States shall notify the District in writing when the interceptor drain becomes available for service. The drainage service component shall be Included in the rate of payment beginning with the year following the date the District is notified that such service is available.

(b) The District shall make payments to the United Staten each year or the rate fixed as provided in subdivision (a) of this article for the quantity of water which the District is required to accept and pay for during such year pursuant to the provisions of Article 3 hereof. The District shall pay one-half (1/2) of the amount payable for raid voter to be furnished for the year before January 1 and shall pay the remainder of the amount payable for said water at the time the quantity of water furnished to the District equals the quantity for which payment has been made but in no event later than July 1 or such other later date or dates of the respective year as may be specified by the Contracting Officer is a written notice to the District. Water requested by the District in excess of the quantity it is required to accept and pay for that year shall be paid for in full at the time or times such request are made.

(c) In the event the District is unable, fails, or refuses to except delivery of the quantities of water available for delivery to and required to be accepted by it pursuant to this

contract, or in the event the District in any year during the periods described in subdivision (b) and (d) of Article 3 hereof fails to submit a schedule for delivery as provided in subdivision (a) of Article 4 hereof, said inability, failure, or refusal shall not relieve the District of its obligation to pay for such water and the District agreed to make payment therefor in the same manner as if said water had been delivered to and accepted by it in accordance with this contract.

ADJUSTMENTS

7. The amount of any overpayment by the District by reason of the quantity of water actually available for the District during any year, ea conclusively determined by the Contracting Officer, having been less than the quantity of such water which the District otherwise under the provisions of this contract would have been required to receive and pay for shall be applied first to any accrued indebtedness arising out of this contract than due and owing to the United States by the District and any amount of such overpayment than remaining shell, at the option of the District, be refunded to the District or credited upon amounts to become due to the United States from the District under the provisions hereby the ensuing year.

NEED OF DISTRICT FOR MORE WATER THAN AGREED QUANTITY

8. In the event the District in any year requires a quantity of water in addition to the maximum total quantity required to be furnished by the United States and accepted and paid for by the District during such year pursuant to Article 3 hereof, the United States, upon receipt from the District of (1) a written notice requesting such additional water together with a schedule indicating the desired times and quantities for the delivery thereof and (2) payment as provided in Article 6 hereof, shall attempt to deliver such additional water to the District in accordance with said schedule to the extent that

additional water is available for the District, as determined by the Contracting Officer. The amount of any overpayment by the District, by reason of the additional quantity of Nectar furnished to the District pursuant to this article having been less than the additional quantity requested and paid for by the District, shall be applied as provided in Article 7 hereof: Provided, That the inability, failure, or refusal of the District to accept delivery of such additional quantities of water when it is available shall not entitle the District to any adjustment of payment for said water. The furnishing by the United States and acceptance by the District of such additional quantities of water shall neither entitle nor obligate the District to receive such quantities in subsequent years.

POINTS OF DELIVERY—MAINTENANCE OF FLOWS AND LEVELS—MEASUREMENT AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

9. (a) The water to be furnished to the District pursuant to this contract will be delivered at such points on the San Luis Canal as may be mutually agreed upon in writing by the Contracting Officer and the District. Provided however, That in the event the United States shall have reached the construction of the portion of the San Luis Unit which probably will embrace such points and the locations have not been so agreed upon, such points shall be established between mile 33 and mile 101 of the San Luis Canal at locations that in the conclusive determination of the Contracting Officer will best serve the needs of the District.

(b) All water delivered pursuant to this contract shall be measured by the United States at the points of delivery with equipment installed, operated, and maintained by the United States. Upon the request of the District, the accuracy of such measurements will be investigated by the Contracting Officer and any errors appearing therein adjusted.

(c) The United States shall not be responsible for the con-

trol, carriage, handling, use, disposal, or distribution of water which may be furnished at the delivery points established pursuant to subdivision (a) of this article, nor for claim of damage of any nature whatsoever, including but not limited to property damage, personal injury or death, arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such water beyond such delivery points: Provided, That the United States reserves the right to the use of all waste, seepage, and return-flow water derived from water furnished to the District hereunder and which escapes or is discharged beyond the District's boundaries and nothing herein shall be construed as to abandonment or a relinquishment by the United States of the right to use any such water, but this shall not be construed as claiming for the United States any right, as waste, seepage, or return flow, to water being used pursuant to this contract for surface irrigation or underground storage within the District's boundaries by the District or those claiming by, through, or under the District.

(d) The United States may temporarily discontinue or reduce the quantity of water to be furnished to the District or the service of the interceptor drain as herein provided for the purpose of such investigation, inspection, maintenance, repair, or replacement as may be reasonably necessary of any of the Project facilities used in the furnishing of water to the District or any part thereof or to the interceptor drain, but so far as feasible the United States will give the District due notice in advance of such temporary discontinuance or reduction, except in case of emergency, in which case no notice need be given. In the event of any such discontinuance or reduction, the United States will upon the resumption of service approximate delivery of the quantity of water which would have been furnished to the District in the absence of such contingency.

LIMITATIONS ON DELIVERY OF WATER

10. Pursuant to the provisions of the Act of June 3, 1960 (74 Stat. 156), no water provided pursuant to this contract shall be delivered to any water user in the District for the production on newly irrigated lands of any basic agricultural commodity, as defined in the Agricultural Act of 1949, or any amendment thereof, if the total supply of such commodity, as estimated by the Secretary of Agriculture for the marketing year in which the bulk of the crop would normally be marketed will be in excess of the normal supply as defined in Section 301(b)(10) of the Agricultural Adjustment Act of 1938, as amended, unless the Secretary of Agriculture calls for an increase in production of such commodity in the interest of national security.

UNITED STATES NOT LIABLE FOR WATER SHORTAGE

11. (a) There may occur at times during any year a shortage in the quantity of water available for furnishing to the District through and by means of the Project, but in no event shall any liability accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising from a shortage on account of errors in operation, drought, or any other causes. In any year in which there may occur a shortage from any cause, the United States reserves the right to apportion the available water supply among the District and others entitled under the then existing contracts to receive water from the San Luis Unit in accordance with conclusive determinations of the Contracting Officer as follows:

(i) A determination shall be made of the total quantity of water agreed to be accepted during the respective year under all contracts then in force for the delivery of Central Valley Project water by the United States from the San Luis Unit, the quantity so determined being hereinafter referred to as the contractual commitments;

(ii) A determination shall be made of the total quantity of water from the Central Valley Project which is available for meeting the contractual commitments, the quantity so determined being hereinafter referred to as the available supply;

(iii) The total quantity of water agreed to be accepted by the District during the respective year, under Article 3 hereof, shall be divided by the contractual commitments, the quotient thus obtained being hereinafter referred to as the District's contractual entitlement; and

(iv) The available supply shall be multiplied by the District's contractual entitlement and the result shall be the quantity of water required to be delivered by the United States to the District for the respective year, but in no event shall such amount exceed the total quantity of water agreed to be accepted by the District pursuant to Article 3 hereof.

Insofar as determined by the Contracting Officer to be practicable, the United States will, in the event a shortage appears probable, notify the District of such determinations in advance of the irrigation season.

(b) In the event that in any year there is delivered to the District by reason of any shortage or apportionment as provided in subdivision (a) of this article or any discontinuance or reduction of service as set forth in subdivision (d) of Article 9 hereof, less than the quantity of water which the District otherwise would be entitled to receive, there shall be made an adjustment on account of the amounts paid to the United States by the District for water for a said year in manner similar to that provided for in Article 7. To the extent of such deficiency, such adjustment shall constitute the solo remedy of the District or anyone having or claiming to have by, through, or under the District the right to the use of any of the water supply provided for herein.

(c) The United States assumes no responsibility with respect to and does not warrant the quality of the water to be furnished pursuant to this contract: Provided, That the District shall not be obligated to accept and pay for any water which contains in excess of three hundred (300) parts by weight of chloride per one million (1,000,000) parts of water. To the extent that any adjustment is necessary because of the existence of chloride in the water available for furnishing to the District in excess of the quantity herein specified and because of previous payments by the District, such adjustment shall be made in a canner similar to that provided in Article 7 hereof.) No adjustment shall be made hereunder in relation to any water actually furnished to and used by, through, or under the District for any purpose.

MUNICIPAL, INDUSTRIAL, AND DOMESTIC USE OF WATER FURNISHED TO DISTRICT

12. Water furnished in accordance with Article 3 of this contract is for agricultural use. Before water furnished under this contract may be delivered by the District for municipal, industrial, and domestic uses, the parties hereto shall agree upon the measurement of such water, the water service rates payable to the United States on account of the delivery for such purposes, and the time for payment therefor.

DRAINAGE STUDIES AND FACILITIES

13. To aid in determining the source and solution of future potential drainage problems the District shall, in a manner satisfactory to the Contracting Officer, initiate and maintain a program of ground-water observation in order to delineate shallow water table areas and shall furnish annually to the Contracting Officer, during the term of this contract and any renewal thereof, records and analyses of such observations as they relate to potential drainage problems. The District shall

construct such drainage works as are necessary to protect the irrigability of lands within the District.

AGEEED CHARGES A GENERAL OBLIGATION OF THE DISTRICT—TAXABLE LAND

14. The District as a whole is obligated to pay to the United States the charges becoming due as provided in this contract notwithstanding the default in the payment to the District by individual water users of assessments, tolls, or other charges levied by the District. The lands which may be charged with any taxes or assessments under this contract are hereby designated and described as all the lands in the District.

ALL BENEFITS CONDITIONED UPON PAYMENT

15. Should any assessment or assessments required by the terms of this contract and levied by the District against any tract of land or water user in the District and necessary to meet the obligations of the District hereunder be judicially determined to be irregular or void, or should the District or its officers be enjoined or restrained from making or collecting any assessments upon such land or from such water user as provided for herein, then such tract shall have no right to any water furnished to the District pursuant to this contract, and no water made available by the United States pursuant hereto shall be furnished for the benefit of any such lands or water users, except upon the payment by the landowner of his assessment or a toll charge for such water, notwithstanding the existance of any contract between the District and the owner or owners of such tract. Contracts, if any, between the District and the water users involving water furnished pursuant to this contract shall provide that such use shall be subject to the terms of this contract. It is further agreed that the payment of charges at the rate and upon the terms and conditions provided for herein is a prerequisite to the right to the use of water furnished to the District pursuant to this

contract, and no irregularity in levying taxes or assessments by the District nor lack of authority in the District, whether affecting the validity of District taxes or assessments or not, shall be held to authorize or permit any water user of the District to demand water made available pursuant to this contract unless charges at the rate and upon the terms and conditions provided for herein have been paid by such water user.

LEVY OF TAXES AND ASSESSMENTS— FIXING OF RATES AND TOLLS

16. The District shall cause to be levied and collected all necessary taxes and assessments and shall use all of the authority and resources of the District to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations under this contract. The District nay, either or both, require the payment of toll charges or levy assessments for such water supplied hereunder.

REFUSAL OF WATER IN CASE OF DEFAULT

17. No water shall be furnished to the District or by the District to or for the use of any lands or parties therein during any period in which the District may be in arrears in the advance payment of charges accruing under this contract. No water shall be furnished to or by the District pursuant to this contract for lands or parties which are in arrears in the payment to the District of any assessments, rates, tolls, or rental charges of the District levied or established by the District and necessary for the purpose of raising revenues to meet the payment by the District to the United States of the District's obligation under this contract.

PENALTY UPON DELINQUENCY IN PAYMENT

Upon every charge or installment of money required to be paid by the District to the United States pursuant to this

contract which shall remain unpaid after the same shall have become due and payable, there shall be imposed a penalty of one-half (1/2) of one (1) percent per month of the amount of such delinquent charge or installment from and after the date when the same becomes due until paid, and the District hereby agrees to pay said penalty: Provided, That no penalty shall be charged to or be paid by the District unless such delinquency continues for more than thirty (30) days.

DISTRICT TO KEEP BOOKS AND RECORDS AND REPORT CROP AND OTHER DATA

The District shall establish and maintain account and other books and records sufficient to enable it to furnish, insofar as the District is permitted to do so by the laws of the State of California, to the Bureau of Reclamation reports and statements to such an extent and in such manner and form as may be prescribed by the United States as to information pertaining to (1) accounts and financial transactions of the District, insofar as such information pertains to this contract and operations thereunder, and (2) crops raised and agricultural and livestock products produced on the lands within the District, a report thereon to be furnished to the Contracting Officer annually before December 31.

INSPECTION OF BOOKS AND RECORDS

20. Subject to applicable Federal laws and regulations, the proper officers or agents of the District shall have full and free access at all reasonable times to the Project account books and official records of the Bureau of Reclamation, insofar as the same pertain to the matters and things provided for in this contract, with the right at any time during office hours to make copies thereof, and the proper representatives of the United States shall have similar rights with respect to the account books and records of the District.

CHANGES IN ORGANIZATION OF DISTRICT

21. While this contract is in effect no changes shall be made in the District either by inclusions which in the aggregate will total more than twelve thousand five hundred (12,500) acres of land or exclusions which in the aggregate will total more than twelve thousand five hundred (12,500) acres of land, by partial or total consolidation or merger with another district, by proceedings to dissolve, or otherwise, except upon the Contracting Officer's written assent thereto.

TRANSFER OF CARE, OPERATION, AND MAINTENANCE OF SAN LUIS UNIT

22. The United States may transfer the San Luis Unit or a portion thereof to the State of California for care, operation, and maintenance and such transfer shall not affect the rights or obligations of either party to this contract.

LAND NOT TO RECEIVE WATER FURNISHED TO DISTRICT BY UNITED STATES UNTIL OWNERS THEREOF EXECUTE CERTAIN CONTRACTS

23. (a) No water made available pursuant to this contract shall be furnished to any excess lands as defined in Article 25 hereof unless the owners thereof shall have executed valid recordable contracts in form prescribed by the United States, agreeing to the provisions of this article and Articles 24 and 25 of this contract, agreeing to the appraisal provided for in Article 24 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such lands at the date of the appraisal without reference to the construction of the Project, all as hereinafter provided, and agreeing to the sale of such excess lands under terms and condition: satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided. No sale of any excess lands shall carry the right to receive water made available pursuant to this contract unless and until the purchase price involved in such sale is unproved by the Contracting Officer and upon proof of fraudulent representation as to the true consideration involved

in such sales the united States may instruct the District by written notice to refuse to furnish any water subject to this contract to the land involved in such fraudulent sales, and the District thereafter shall not furnish said water to such lands until such written notice is withdrawn.

(b) If Project water furnished to the District pursuant to this contract reaches the underground strata of excess land owned by a large landowner, as defined in subdivision (a) of Article 25 hereof, who has not executed a recordable contract and the large landowner pumps such Project water from the underground, the District will not be deemed to have furnished such water to said lands within the meaning of this contract if such water reached the underground strata of the aforesaid excess land as an unavoidable result of the furnishing of Project water by the District to nonexcess lands or to excess lands with respect to which a recordable contract has been executed.

VALUATION AND SALE OF EXCESS LANDS

24. (a) The value of the excess irrigable lands within the District held in private ownership of large landowners as defined in the next succeeding article hereof, for the purposes of this contract, shall be appraised in a manner to be prescribed by the Secretary. At the option of a large landowner, however, the value of such land may be appraised, subject to the approval thereof by the Secretary, by three appraisers. One of said appraisers shall bedesignated by the Secretary and one shall be designated by the District and the two appraisers so appointed shall name the third. If the appraisers so designated by the Secretary and the District are unable to agree upon the appointment of the third, the Presiding Justice of the Fifth District Court of Appeal of the State of California shall be requested to designate the third appraiser.

(b) The following principles shall govern the appraisal:

(i) No value shall be given such lands on account of the existing or prospective possibility of securing water from the Project;

(ii) The value of improvements on the land at the time of said appraisal shall be included therein, but shall also be set forth separately in such appraisal.

(c) The excess land of any large landowner shall be reappraised at the instance of the United States or at the request of said landowner. The cost of the first two appraisals of each tract of excess land shall be paid by the United States. The cost of each appraisal thereafter shall be paid by the party requesting such appraisal.

(d) Any improvements made or placed on the appraised land after the appraisal hereinabove provided for prior to sale of the land by a large landowner shall be appraised in like manner.

(e) Excess irrigable lands sold by large landowners within the District shall not carry the right to receive water made available pursuant to this contract for such lands and the District agrees to refuse to furnish such water to lands so sold until, in addition to compliance with the other provisions hereof, a verified statement showing the sale price upon any such sale shall have been filed with the District and said sale price is not in excess of the appraised value fixed as provided herein.

(f) The District agrees to take all reasonable steps requested by the Contracting Officer to ascertain the occurrence and conditions of all sales of irrigable land of large landowners in the District made subsequent to the execution of this contract and to inform the United States concerning the same.

(g) A true copy of this contract, of each recordable contract executed pursuant to this article and Articles 23 and

25 hereof, and of each appraisal made pursuant thereto shall be furnished to the District by the United States and shall be maintained on file in the office of the District and like copies in such offices of the Bureau of Reclamation as may be designated by the Contracting Officer and shall be made available for examination during the usual office hours by all persons who may be interested therein.

EXCESS LANDS

25. (a) As used herein the term "excess land" means that part of the irrigable land within the District in excess of one hundred and sixty (160) acres held in the beneficial ownership of any single person; or in excess of three hundred and twenty (320) acres held in the beneficial ownership of husband and wife jointly, as tenants in common or by the entirety, or as community property; the term "large landowner" means an owner of excess lands and the term "nonexcess land" means all irrigable land within the District which is not excess land as defined herein.

(b) Each large landowner as a further condition precedent to the right to receive water made available pursuant to this contract for any of his excess land shall:

(i) Before any water is furnished by the District to his excess land, execute a valid recordable contract in form prescribed by the United States, agreeing to the provisions contained in this article and Articles 23 and 24 hereof and agreeing to dispose of his excess land in accordance therewith to persons who can take title thereto as nonexcess land as herein provided and at a price not to exceed the approved, appraised value of such excess land and within a period of ten (10) years after the date of the execution of said recordable contract and agreeing further that if said land is not so disposed of within said period of ten (10) years, the Secretary shall have the power to dispose of said land at the

appraised value thereof fixed as provided herein or such lower price as may be approved by the owner of such land, subject to the same conditions on behalf of such large landowner; and the District agrees that it will refuse to furnish said water to any large landowner other than for his nonexcess land until such owner meets the conditions precedent herein stated;

(ii) Within thirty (30) days after the date of notice from the United States requesting such large landowner to designate his irrigable lands within the District which he desires to designate as nonexcess lands, file in the office of the District, in duplicate, one copy thereof to be furnished by the District to the Bureau of Reclamation, his written designation and description of lands so selected to be nonexcess land and upon failure to do so the District shall make such designation and mail a notice thereof to such large landowner, and in the event the District fails to act within such period of time as the Contracting Officer considers reasonable, such designation will be made by the Contracting Officer, who will mail a notice thereof to the District and the large landowner. The large landowner shall become bound by any such action on the part of the District or the Contracting Officer and the District will furnish said water only to the land so designated to be nonexcess land. A large landowner may with the consent of the Contracting Officer designate land other than that previously designated as nonexcess land: Provided, That an equal acreage of the land previously designated as nonexcess shall, upon such new designation, became excess land thereafter subject to the provisions of this article and Articles 23 and 24 of this contract and shall be described in an amendment of such recordable contract as may have been executed by the large landowner in the same manner as if such land had been excess land at the time of the original designation.

AMENDMENT OF FEDERAL RECLAMATION LAWS

26. In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal reclamation laws, Articles 23, 24, and 25 of this contract will no longer be of any force or effect, and, in the event that the Congress amends the excess-land provisions or other provisions of the Federal reclamation laws, the United States agrees, at then option of the District, to negotiate amendments of appropriate articles of this contract, all consistently with the provisions of such repeal or amendment.

WATER ACQUIRED BY DISTRICT OTHER THAN FROM THE UNITED STATES

27. (a) The provisions of this contract shall not be applicable to or affect water or water rights now owned or hereafter acquired by the District or landowners within the District other than from the United States. Water furnished pursuant to the terms of this contract may be transported by means of the same distribution facilities as water now available or which way become available to the District or landowners within the District other than pursuant to the terms of this contract if the Contracting Officer determines that such mingling is necessary to avoid a duplication of facilities; and notwithstanding such mingling of water, the provisions of this contract shall be applicable to the quantity of water furnished to the District pursuant to the terms hereof, and such mingling of water shall not in any manner subject to the provisions of this contract the quantity of water acquired by or available to the District or landowners within the District other than from the United States.

(b) With respect to the distribution works or portion's thereof in which mingling is permitted as provided in subdivision (a) hereof, the District:

(i) Will be responsible for the operation and maintenance of separate outlets from the distribution system for

nonexcess and excess lands as defined in Article 23 hereof. At the request of the Contracting Officer the District will be responsible for the installation, operation, and maintenance of water-measuring equipment at delivery points to excess lands and, further, will be responsible for the installation, operation, and maintenance of similar equipment for measuring the water available to the District or landowners within the District other than from the Project, and the Contracting Officer may check and inspect said equipment at any time;

(ii) Agrees that the quantity of water furnished to it by the United States during each 24-hour period will be delivered by the District only to eligible land through the aforesaid outlets to eligible lands. The District shall be deemed to be in breach of this article and Articles 23, 24, and 25 of this contract if at any time there is furnished to all excess lands not covered by recordable contracts and served by the distribution works or portions thereof in which mingling is permitted, a quantity of water which is greater than that which the District or landowners within the District have introduced into said system from the supply available other than pursuant to this contract.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENT OF FUNDS

28. The expenditure of any money or the performance of any work by the United States hereunder which may require appropriations of money by the Congress or the allotment of funds shall be contingent upon such appropriations or allotment being made. The failure of the Congress so to appropriate funds or the absence of an allotment of funds shall not relieve the District from any obligations then accrued under this contract, and no liability shall accrue to the United States in case such funds are not appropriated or allotted.

OFFICIALS NOT TO BENEFIT

29. (a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(b) No official of the District shall receive any benefit that may arise by reason of this contract other than as a landowner within the District and in the same manner as other landowners within the District.

NOTICES

30. Any notice or announcement which the provisions hereof contemplate shall be given to one of the parties hereto by the other shall be deemed to have been given if deposited in the United States Post Office on the part of the United States in a franked or postage prepaid envelope addressed to the District at its office in Fresno, California, and on the part of the District in a postage-prepaid envelope addressed to the Bureau of Reclamation, United States Department of the Interior, Sacramento, California, or such other address as from time to time may be designated by the Contracting Officer in a written notice to the District: Provided however, That this article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT-WAIVERS-REMEDIES NOT EXCLUSIVE-OPINIONS AND DETERMINATIONS

31. (a) The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the United States.

(b) Any waiver at any time by either party to this contract of its rights with respect to a default, or any other matter

arising in connection with this contract, shall not be deemed to be a waiver with respect to any subsequent default or matter.

(c) Nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving the United States of any means of enforcing any remedy, either at law or in equity, for the breach of any provisions hereof which it would otherwise have.

(d) Where the terms of this contract provide for matters being done to the satisfaction of a representative of either party hereto, or for action to be based upon the opinion or conclusive determination of such a representative of either party hereto, such terms are not intended to be and shall never be construed as permitting such satisfaction, opinion, or determination of such a representative of either party to this contract to be arbitrary, capricious, or unreasonable; and the District, notwithstanding any other provisions of this contract, expressly reserves the right to relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable satisfaction, opinion, or determination

ASSURANCE RELATING TO VALIDITY OF CONTRACT

32. (a) Promptly after the execution and delivery of this contract the District shall file and prosecute to a final decree, including any appeal therefrom to the highest court of the State of California, in a court of competent Jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings had for the organization of the District and the proceedings of the District Board of Directors and of the District leading up to and including the making of this contract and the validity of the provisions thereof; and this contract shall not be binding on the United States until said District organization, proceedings, and contract shall have been so confirmed by a court of competent

jurisdiction or pending appellate action in any court if ground for appeal be laid: Provided, That nothing herein contained shall require the District to assume the responsibility of prosecuting judicial review beyond the highest court of the State of California.

(b) This contract shall be indivisible for purposes of validation and shall not be binding on the United States or the District unless validated in each and all of its term and conditions as executed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and year first above written.

THE UNITED STATES OF AMERICA

/s/ [ILLEGIBLE]

By [ILLEGIBLE]
Regional Director, Region 2
Bureau of Reclamation

WESTLANDS WATER DISTRICT

/s/ [ILLEGIBLE]
By [ILLEGIBLE]
President

(SEAL)—Affixed

Attest:

/s/ [ILLEGIBLE]
Secretary

RESOLUTION NUMBER 121-62

WHEREAS, Westlands Water District and the Bureau of Reclamation, United States Department of the Interior, have been negotiating for the execution of a contract under the terms of which the United States would provide water service to this District from the San Luis Unit of the Central Valley Project; and

WHEREAS, the Bureau of Reclamation has submitted to Westlands Water District a draft of contract marked "R.O. Draft 12/7-1963" under the terms of which such service would be provided; and

WHEREAS, This District is in serious need of a supplemental water supply; and

WHEREAS, this District was formed in contemplation of the acquisition of a supplemental water supply from the San Luis Unit of the Central Valley Project; and

WHEREAS, said draft of contract marked "R.O. Draft 12/7-1962" is considered by this Board to be satisfactory and that it would be in the best interests of this District to execute said contract,

NOW, THEREFORE, BE IT RESOLVED, that the draft of proposed contract marked "R.O. Draft 12/7-1962" between the United States and Westlands Water District be, and it is, hereby approved.

BE IT FURTHER RESOLVED, that the Manager Chief Counsel of this District be, and he is, hereby authorized and instructed to take the necessary steps to complete the statutory and other procedures required to be met prior to the execution of said contract; and

BE IT FURTHER RESOLVED, that, upon the approval by the Secretary of the Interior of said form of contract and after approval by the California Districts Securities Commission and the voters of this District, the President and the Secretary

of this District be, and they are, hereby authorized to execute said contract for and on behalf of Westlands Water District.

AYES: GIFFEN, DIEKER, BAKER, BENSON, van LOBEN SELS -

NOES: NONE

ABSENT: ROBINSON, THOMAS

STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

STEWART P. SMITH does hereby certify that he Is the duly appointed qualified and acting Secretary of WEST-LANDS WATER DISTRICT, a public district organized under the laws of the State of California with its offices at Fresno California; that the foregoing Resolution Number 121-62 was duly and results adopted by the Board of Directors of WESTLANDS WATER DISTRICT at a meeting of said Board of Directors duly called and held on the 10th day of December, 1962 at the offices of said WEST-LANDS WATER DISTRICT at Which a quorum of said Directors was present and acting; and that said Resolution is still in full force and affect.

DATED: January 10, 1963

/s/ Stewart P. Smith
STEWART P. SMITH
Secretary, Westlands Water District

(SEAL)

RESOLUTION No. 125-63

WHEREAS Westlands Water District has heretofore approved a proposed draft of contract marked R.O. Draft 12/7-1962, for water service to this District from the San Luis Unit of the Central Valley Project; and

WHEREAS, said form of contract was submitted to the Secretary of the Interior for approval on behalf of the United States; and

WHEREAS the President of the United States and the Secretary of the Interior have approved said draft of contract subject to certain amendments, which amendments are incorporated In a draft of said contract marked R.O. Draft 12/7-1962, Rev. W.O. 1-4-63. Rev. V.O. 1-21-63, and

WHEREAS, said draft of contract, as mended, is satisfactory to Westland Water District; and

WHEREAS, said draft of contract, under the provisions of Section 35885 of the Water Code of California requires the approval of the California Districts Securities Commission prior to execution.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of Westlands Water District do, and it does, hereby approve, for execution, the proposed contract between the United States of America and the Westlands Water District, which contract is marked R.O. Draft 12/7-1962, Rev. V.O. 1-4-63, Rev. W.O. 1-21-63.

BE IT FURTHER RESOLVED, that the California Districts Securities Commission be, and it is, hereby requested to approve said form of contract marked R.O. Draft 12/7-1962, Rev. W.O. 1-4-63, Rev. W.O. 1-21-63.

BE IT FURTHER RESOLVED, that Ralph M. Brody, Manager Chief Counsel for this District be, and he is, hereby authorized and directed to petition said California Districts Securities Commission for such approval and to execute all necessary documents for and on behalf of Westlands Water District required for obtaining such approval of the California Districts Securities Commission.

AYES: GIFFEN, DIEKER, BAKER, BENSON, ROBINSON, THOMAS, van LOBEN SELS

NOES: NONE

ABSENT: NONE

STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

STEWART P. SMITH does hereby certify that he is the duly appointed, qualified and acting Secretary of WEST-LANDS WATER DISTRICT, a public district organized under the laws of the State of California with its offices at Fresno, California; that the foregoing Resolution Number 125-63 was duly end regularly adopted by the Board of Directors of WESTLANDS WATER DISTRICT at a meeting of said Board of Directors duly called and held on the 11th day of February, 1963 at the offices of said WESTLANDS WATER DISTRICT at which a quorum of said Directors was present end acting; and that said Resolution is still in full force and effect.

DATED: June 5, 1963

/s/ Stewart P. Smith
STEWART P. SMITH
Secretary, Westlands Water District

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

Contract No. 14-06-200-2020A
April 1, 1965

CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT PROVIDING FOR THE CONSTRUCTION OF A WATER DISTRIBUTION AND DRAINAGE COLLECTOR SYSTEM

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UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

Contract No. 14-06-200-2020A

CONTRACT BETWEEN THE UNITED STATES AND WESTLANDS WATER DISTRICT PROVIDING FOR THE CONSTRUCTION OF. A WATER DISTRIBUTION AND DRAINAGE COLLECTOR SYSTEM

THIS CONTRACT, made this 1st day of, April, 1965, in pursuance generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all collectively hereinafter referred to as the Federal reclamation laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as the United States, and WESTLANDS WATER DISTRICT, hereinafter referred to as the District, a political subdivision of the State of California, duly organized, existing, and acting pursuant to the laws thereof, with its principal place of business in Fresno, California,

WITNESSETH, That:

EXPLANATORY RECITALS

WHEREAS, the United States is constructing and operating the Federal Central Valley Project for the purpose, among others, of furnishing water for irrigation, municipal, domestic, and other beneficial uses; and

WHEREAS, the United States will furnish Federal Central Valley Project water to the District pursuant to Contract No. 14-06-200-495-A, dated June 5, 1963, or as it may hereafter be amended, renewed, or extended; and

WHEREAS, the District, in order to utilize its groundwater supply and the water supply made available under the

water service contract and such future contracts as may be made between the United States and the District, desires that a water distribution and drainage collector system be constructed for the District by the United States acting by and through the Bureau of Reclamation, United States Department of the Interior, pursuant to the Federal reclamation laws; and

WHEREAS, the District has constructed a portion of the water distribution facilities required for the operation of the distribution system; and

WHEREAS, it is desirable and in the interest of the United States and the District that the facilities constructed by the District for water distribution be acquired by the United States for integration with the distribution system; and

WHEREAS, the United States is willing to undertake the construction of the aforementioned water distribution and drainage collector system under the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual and dependent covenants herein contained, it is agreed as follows:

DEFINITIONS

1. When used herein, unless otherwise distinctly expressed, or manifestly incompatible with the intent hereof, the term:

(a) "Secretary" or "Contracting Officer" shall mean that Secretary of the United States Department of the Interior or his duly authorized representative;

(b) "Project" shall can the Federal Central Valley Project, California, of the Bureau of Reclamation;

(c) "year" shall mean a calendar year;

(d) "distribution system" shall mean a water distribution and lateral system, primarily of closed pipe, including

facilities for the integration of ground with surface water supplies, and a drainage collector system and related facilities to be constructed under the terms of this contract;

(e) "water service contract" shall mean the contract of June 5, 1963, No. 14-06-200-495-A, or as it may hereafter be amended, renewed, or extended, between the United States and the District providing for water service to the District from the San Luis Unit of the Central Valley Project.

CONSTRUCTION OF DISTRIBUTION SYSTEM AND LIMIT OF EXPENDITURES THEREFOR

2. (a) To the extent that funds may now or hereafter be available by appropriation and allocation for the purposes set forth herein, the United States will expend toward construction of a distribution system (generally as illustrated in Exhibit A) a sum not in excess of One Hundred Fifty-Seven Million Forty-Eight Thousand Dollars ($157,048,000), or so much thereof as the Contracting Officer deems necessary for the completion of the distribution system. Said distribution system will not include the San Luis Canal or the San Luis Canal right-of-way except facilities and structures for handling water after delivery thereof to the District at the delivery points established pursuant to the water service contract. The United States and the District will exert their best efforts to expedite the completion of such features.

(b) The distribution system will be constructed so as to provide facilities for the delivery of water from the San Luis Canal to such units of a total of approximately 400,000 acres of irrigable land as mutually agreed upon by the District and the Contracting Officer prior to the award of the construction contract for the area to be served.

(c) Facilities to be constructed will be separated into construction groups. The general type and layout of the distribution system and the portions thereof to be included in each construction group shall be subject to review and approval by the District evidenced by a resolution of the District's Board of Directors prior to the commencement of construction of each such construction group of the distribution system. Construction group 1 shall include substantially all of the water distribution facilities, drainage collector facilities, and works for the integration of ground with surface water, all as initially required to serve the area substantially as delineated on Exhibit Construction groups 2 and 3 shall include added portions of the distribution system on which subsequent construction is started no later than June 30, 1974, and June 30, 1979, respectively, except as provided in Article 4(b) hereof. Changes in capacity, specifications, locations, lengths and alignments, as may in the opinion of the Contracting Officer be expedient, economical, necessary, or advisable to the extent that such changes do not substantially change the basic character or service capability of the facilities theretofore approved by the District, may be made during the progress of the work after consultation with the District.

(d) The United States and the District shall cooperate closely in the preparation of the plans, designs, specifications, method of contracting, and reviews of abstracts of bids for construction of the distribution system and District representatives may at any time consult with the Contracting Officer or his designated representatives on such matters.

(e) Quarterly progress reports on design and construction, including costs thereof, in the form normally used by the United States will be furnished to the District. By reports and joint conferences, the District shall be kept informed of the progress on and costs of the facilities. The United States will furnish other related information in its possession as may be requested by the District.

The United States and the District will conduct cost auditing examinations and conferences as may be requested by the District.

DISTRICT FACILITIES TO BE ACQUIRED BY THE UNITED STATES

3. The United States shall acquire for the construction of the distribution system such water distribution pipeline facilities, including sublaterals constructed by the District as are usable as an integral part of the distribution system, which pipeline extends from a point approximately two (2) miles west of the easterly boundary of the District along Adams Avenue to the right-of-way of the San Luis Canal. The amount which the United States shall pay for such facilities, including rights-of-way, shall not exceed the lesser of (a) the cost which the United States would have incurred if it had constructed a line and sublaterals to serve the same area, or (b) the cost incurred by the District in the construction and operation and maintenance of said facilities less the amount attributable to such facilities received from the United States in payment of water transportation for preconsolidation purposes pursuant to Contract No. 14-06-200-316-A.

PAYMENT BY DISTRICT

4. (a) The District shall repay to the United States the actual cost of the distribution system constructed and acquired pursuant to Articles 2 and 3 hereof, but in no event shall the total cost incurred by the United States for the distribution system exceed One Hundred Fifty-Seven Million Forty-Eight Thousand Dollars ($157,048,000).

(b) The construction cost of construction group 1 described in subdivision (c) of Article 2 shall be paid by the District in eighty (80) successive semiannual installments payable on January 1 and July 1 of each year beginning in the year following completion of said group to the point where all the laterals and sublaterals of such construction group and

substantially all other facilities for such construction group can be put in service for the delivery of eater, as announced in writing by the. Contracting Officer pursuant to Article 24. Each of the first ten (10) payments shall be for one one-hundred and sixtieth (1/160th) of the construction cost of said group 1 and each of the remaining seventy (70) payments shall be for one-seventieth (1/70th) of the remainder of the cost. The construction cost of subsequent construction groups shall be paid in eighty (80) successive equal semiannual installments payable on January 1 and July 1 of each year. The first installment with respect to construction groups 2 and 3 shall become due and payable on January 1 of the year following completion of construction of the respective construction group to the point where all the laterals and sublaterals of such construction group and substantially all other facilities for such construction group can be put in service for the delivery of water, as announced in writing by the Contracting Officer pursuant to Article 24. If the actual cost of any group shall not have been determined by the Contracting Officer when the first construction obligation installment for such group shall have become due hereunder, he shall announce the estimated construction cost. Such estimated construction cost shall govern the amount of the installments herein referred to until such time as the actual construction cost can be determined and a statement thereof furnished to the District. When notice of the actual construction cost has been given to the District, installments coming due thereafter from the District shall be adjusted to reflect any difference between the estimated cost and the actual cost of construction. If after June 30, 1979, it is determined that facilities to complete the distribution system, pursuant to Article 2 hereof, are required by the District in addition to the facilities in construction group 3, such additional facilities may with the consent of the District be constructed by the United States and their cost added to the unpaid balance of the cost of construction group 3. The

remainder of payments to be made by the District for construction group 3 shall be adjusted to cover the total cost of the additional facilities within the repayment period for that group.

(c) The Contracting Officer may at any time in his discretion, upon request of the District evidenced by a certified copy of a resolution of the Board of Directors of the District, provide for dates upon which semiannual installments of the construction cost shall become due and payable other than and in lieu of those dates fixed for the payment of such semiannual installments as provided in subdivision (b) of this article.

(d) When the Contracting Officer notifies the District in writing that total expenditures have been made to the limit determined pursuant to subdivision (a) of this article or so such thereof as the Contracting Officer considers necessary and useful for the construction of the distribution system, the distribution system shall also be deemed to have been completed within the meaning of this contract.

ACQUISITION OF LANDS AND INTERESTS IN LANDS

5. The United States will invoke all legal and valid reservations of rights-of-way under acts of Congress, or otherwise reserved or held by it available for the purposes of this contract. The United States reserves the right where rights-of-way are thus invoked to reimburse the owner of the servient lands for the value of the lands and the value of improvements which may be destroyed, and the District agrees that the United States may include such disbursement together with any others that pay be authorized the Congress in the cost of the distribution system to be repaid by the District. The District agrees to convey to the United States, on the request of the Contracting Officer, without cost, the unencumbered fee simple title to any and all lands owned by it, or perpetual easements therein, required for right-of-way,

construction, or other related purposes. Where rights-of-way are required for works herein agreed to be constructed by the United States and such rights-of-way are not reserved to the United States under acts of Congress or otherwise and the lands over which such rights-of-way are required are not then owned by the District, then the District upon request of the United States agrees that it will acquire such lands or perpetual easements therein, using in connection therewith such forms of contracts, deeds, and other necessary papers as may be required by the United States, and purchases shall be only at prices that are satisfactory to the Contracting Officer. Title may be taken directly in the name of the United States or by the District and then transferred to the United States and on procuring execution of the necessary contracts, deeds, and other papers they shall be transmitted by the District to the United States by whom payment will be made after title has been found satisfactory to the Contracting Officer. Expenses incurred by the District in connection with acquisition provided for herein, to the extent approved by the Contracting Officer, shall be paid to the District on the basis of quarterly statements submitted at the close of each quarter of the year and shall be chargeable as part of the construction costs.

OPERATION AND MAINTENANCE OF COMPLETED PORTIONS OF SYSTEM

6. Whenever, prior to the transfer of operation and maintenance of the distribution system, or any portion thereof, to the District as provided in Article 7 hereof, the Contracting Officer determines that any portion or portions of the system being constructed by the United States may be utilized for its intended purposes without interfering with the construction of the remainder of the distribution system, he will so notify the District in a written notice stating the period of availability and the estimated cost to the United States of supervising the operating and maintaining of such portion or portions of the system by the District during such period. If the District

desires that such portion or portions of the system so be utilized, it shall give the Contracting Officer written notice thereof and shall make payment in advance to the United States of said estimated cost of said supervision of operation and maintenance. Thereupon the District will at its own expense operate and maintain said portion or portions of the system under supervision of the United States. The United States at any time may terminate the use of said portion or portions of the system if the Contracting Officer determines that such use is interfering or will interfere with the construction of the distribution system. The District shall contribute all labor and materials toward the operation and maintenance of the portion or portions of the system being utilized. If the actual cost to the United States of operating and maintaining said portion or portions of the system exceeds the estimated cost paid in advance by the District, the District shall pay the difference upon receipt of a written notice thereof. If said actual cost is less than said estimated cost, the difference shall at the option of the District either be credited upon future payments due to the United States or be refunded to the District.

TRANSFER OF OPERATION AND MAINTENANCE TO DISTRICT—UNITED STATES TO BE HELD HARMLESS

7. (a) Upon completion of construction of each construction group of the distribution system or such earlier date as may be agreed upon by the Contracting Officer and the District, the District shall accept the care, operation, and maintenance of such group or any part thereof described in a transfer notice to be furnished to the District by the Secretary. The District, without expense to the United States, shall care for, operate, and maintain such transferred works in full compliance with the terms of this contract and the water service contract, and in such manner that said transferred works shall remain in good and efficient condition. The District also agrees, upon the effective date of the transfer

notice, to assume all obligations of the United States under any contract or contracts relating to the crossing of the distribution system facilities in, over, along, or across land or rights-of-way of public utilities, the State of California, or agencies thereof. The District will use all proper methods to secure the economical and beneficial use of the water delivered by means of the distribution system.

(b) At any time prior to full payment of the construction costs that the Contracting Officer determines that the District has not cared for, operated, maintained, or delivered water from transferred works in the manner as aforesaid, the United States may assume the control of the distribution system and appurtenant works and all equipment, materials, and supplies used, acquired for use, and useful in the operation of the distribution system, and shall operate and maintain such works, and the District hereby agrees to surrender possession of said works. The works so taken back for operation and maintenance by the United States may be retransferred to the District upon furnishing the District ninety (90) days written notice of intention to retransfer. If any works are taken back by the United States at such time that funds for the operation and maintenance cannot be advanced in accordance with the procedure sat forth in Article 8 hereof, the District hereby agrees, on the basis of statements of estimates to be submitted by the Contracting Officer, to advance sufficient funds to provide for the operation and maintenance of such works until such funds can be provided under the procedure set forth as aforesaid in Article 8 hereof.

(c) No substantial change in any of the transferred works shall be made by the District without first obtaining written consent of the Contracting Officer. The District shall make promptly any and all repairs to the transferred works which in the opinion of the Contracting Officer are deemed necessary for the proper care, operation, and maintenance of the same. If at any time in the opinion of the Contracting Officer any

part of the transferred works shall from any cause be in a condition unfit for service, he may order that the water be turned out and shut off from that part of the distribution system until in his opinion such property is put in proper condition for service. In the event the District neglects or fails to make such repairs, the United States may cause the repairs to be made and may charge the cost thereof to the District, which charge the District shall pay in the manner provided in Article 9 hereof. The District shall provide for the collection of sufficient operation and maintenance or toll charges to pay all such bills to the United States within the time stated herein in addition to providing the necessary funds to meet the other obligations of the District.

(d) The Contracting Officer may from time to time cause an appropriate inspection of the transferred works and of the books and records of the District to be made to ascertain whether the requirements of this contract are being satisfactorily performed by the District. Such inspections may include physical inspection of all properties and audit of the books and records of the District. Any such inspection or audit shall, except in case of emergency, be made after written notice to the District and the actual expense thereof shall be paid by the District to the United States in the manner provided in Article 9 hereof.

(e) No liability shall accrue against the United States and its officers and employees because of damages arising out of or in any manner connected with the care, operation, and maintenance of the distribution system by the District. The District hereby releases the United States and agrees to hold it free and harmless and to indemnify it from all damage claims that may result from operation and maintenance of transferred works.

ESTIMATED COST OF OPERATION AND MAINTENANCE TO BE PAID IN ADVANCE

8. (a) During the time that the distribution system or any part thereof is being operated by the United States as provided in Article 7(b) hereof, the District will pay in advance to the United States not later than January 1, upon estimates therefor to be furnished by the United States on or before September 1 next preceding, the estimated cost of operation and maintenance for such year. The District in addition shall contribute such labor and materials toward the operation and maintenance of the distribution system or any portion thereof as may be requested by the Contracting Officer. The surplus of any amount so advanced by the District for operation and maintenance by the United States during any year shall be credited on future estimated cost of operation and maintenance by the United States.

(b) Whenever in the opinion of the Contracting Officer the amounts available from payments made by the District of the estimated annual operation and maintenance charges will be inadequate to operate and maintain the distribution system properly to the end of any year, he may give written notice to the District, hereinafter referred to as the supplemental operation and maintenance charge notice, stating therein the amount of additional advance payment of funds required for such operation and maintenance, and the District shall pay the amount thereof on or before the dates specified in such supplemental operation and maintenance charge notice.

(c) Any amount of said operation and maintenance payments by the District for any year remaining unexpended and unobligated in the possession of the United States on the effective date of retransfer of the distribution system, in whole or in part, to the District for care, operation, and maintenance, in accordance with Article 7(b) hereof, shall be refunded to the District.

(d) To the extent that the distribution system is operated and maintained by the United States, there shall be included as a part of the operation and maintenance costs such items. for administration, supervision, inspection, replacement, and general expenses as properly are chargeable to such work in the opinion of the Contracting Officer.

DISTRICT TO PAY CERTAIN MISCELLANEOUS COSTS RELATING TO TRANSFERRED WORKS

9. In addition to the other payments to be made by the District, as provided by this contract, the District shall pay to the United States on or before April 1 of the year following that in which the same shall have been incurred and a statement thereof furnished by the United States, the following costs:

(i) Such items of cost incurred by the United States in connection with the distribution system for administration, supervision, and inspection during the time the distribution system is operated and maintained by the District and for the period covered by the statement; and

(ii) The cost of repairs to transferred works made by the United States as provided in Article 7 hereof.

COMPUTATION OF COSTS

10. The actual construction cost of the distribution system to be repaid to the United States by the District shall embrace all expenditures by the United States of whatsoever kind in connection with, growing out of, or resulting from work performed in connection with the distribution system, including but not limited to the cost of labor, material, equipment, engineering and legal work, superindence, administration and overhead, rights-of-way, property, whether purchased from the District or others, and damage of all kinds, and shall include all sums expended by the Bureau of Reclamation in surveys and investigations in connection with the distribution

system, both prior to and after the execution of this contract, and the expense of all soil investigations and other preliminary work. The determination of what costs are properly chargeable hereunder and the amount thereof shall be made conclusively by the Contracting Officer.

ACCUMULATION AND USE OF RESERVE FUND

11. (a) General. Commencing with the year following the year of completion of construction group 1 as provided in subdivision (c) of Article 2 hereof and continuing until all construction charge obligations to be paid to the United States under this contract are paid in full, the District shall accumulate and maintain a reserve fund, which will be available for use in the manner, for the purposes, and in the circumstances hereinafter set forth as follows:

(i) During such time as the distribution system constructed hereunder is operated and maintained by the United States in accordance with the provisions herein, the reserve fund shall be available for use by the United States for the purposes specified in this article;

(ii) At the option of the District, the reserve fund may be invested to the extent permitted by law, provided that such reserve fund may be made available within a reasonable time to meet the expenses for the purposes for which it was accumulated; and

(iii) From time to time, as requested by either party to this contract, the reserve fund provisions may be reconsidered and changed by mutual agreement of the parties.

(b) Reserve Fund. The reserve fund shall consist of annual deposits by the District of not lees than Fifty Thousand Dollars ($50,000) to a special account created by the District for the purpose. Such annual deposits shall continue until the amount in the reserve fund is not less than Two

Hundred Fifty Thousand Dollars ($250,000). Whenever said reserve fund is reduced below Two Hundred Fifty Thousand Dollars ($250,000) by expenditures therefrom, it shall be restored to not less than the amount set forth above by the accumulation of annual deposits at a minimum rate of twenty percent (20%) of that amount. Expenditures shall be made from such fund only for meeting extraordinary costs of care, operation, maintenance, repair, and replacement of the distribution system including Project features operated and maintained by the District, and for care, operation, and maintenance during periods of special stress, such as may be caused by drought, hurricane, storms or other emergencies.

AGREED CHARGES A GENERAL OBLIGATION OF THE DISTRICT—TAXABLE LANDS—LEVY OF TAXES AND ASSESSMENTS—FIXING OF RATES AND TOLLS

12. (a) The District as a whole is obligated to pay to the United States the charges becoming due as provided in this contract notwithstanding the default in the payment to the District by individual water users of assessments, tolls, or other charges levied by the District. The lands which may be charged with any taxes or assessments under this contract are hereby designated and described as all the lands in the District.

(b) The District shall cause to be levied and collected all necessary taxes and assessments and will use all of the authority and resources of the District to make in full all payments to be made pursuant to this contract on or before the date such payments become due and to meet its other obligations hereunder. The District may, either or both, require the payment of toll charges or levy assessments to meet its obligations hereunder.

ALL BENEFITS CONDITIONED UPON PAYMENT

13. Should any assessment or assessments levied by the District against any tract of land or water user in the District

and required to meet the obligations of the District under this contract be judicially determined to be irregular or void, or should the District or its officers be enjoined or restrained from making or collecting any assessments upon such land or from such water user as provided for herein, then such tract or water user shall have no right to any of the benefits of this contract, and no use shall be made of the distribution system for the benefit of any such lands or water user, except upon the payment by the landowner of his assessment or a toll charge for the use of said distribution system, notwithstanding the existence of any contract between the District and the owner or owners of such tract. Contracts, if any, between the District and the water user invoiving service from said distribution system shall provide that such use shall be subject to the terms of this contract. It is further agreed that the payment of charges at the rates and upon the terms and conditions provided for herein is a prerequisite to the right to service from said distribution system, and no irregularity in levying taxes or assessments by the District nor lack of authority in the District, whether affecting the validity of District taxes or assessments or not, shall be held to authorize or permit any water user of the District to demand or receive service made available pursuant to this contract unless charges at the rates and upon the terms and conditions provided for herein have been paid by such water user.

REFUSAL OF SERVICE IN CASE OF DEFAULT

14. No service from the distribution system shall be furnished to the District or by the District to or for the use of any lands or parties therein during any period in which the District may be in arrears in the advance and other payments of operation and maintenance costs or for more than twelve (12) months in the payment of construction charges accruing under this contract. No water made available pursuant to the water service contract and no service from the distribution system shall be furnished to or by the District to any lands or

parties which are in arrears in the payment to the District of any assessments, rates, tolls, or other charges levied or established by the District for the purpose of providing revenues to meet payments by the District to the United States pursuant to Articles 7 and 9 hereof or are in arrears for more than twelve (12) months in similar payment to the District for the purpose of providing revenues to meet payment by the District to the United States pursuant to Article 4 hereof.

PENALTY FOR DELINQUENCY IN PAYMENT

15. The District shall pay a penalty on installments or charges which become delinquent computed at the rate of one-half of one percent per month of the amount of such delinquent installments or charges for each day from the date of such delinquency until paid: Provided, That no penalty shall be charged to the District unless such delinquency continues for more than thirty (30) days.

BOOKS, RECORDS, AND REPORTS

16. The District shall establish and maintain accounts and other books and records pertaining to its financial transactions, land use, crop production, water supply, water use, changes to the distribution system, and to such other matters as the Contracting Officer may require. Reports thereon shall be furnished to the United States in such form and on such date or dates as may be required by the Contracting Officer. Each party shall have the right, during office hours, to examine and make copies of the other party's books and official records relating to matters covered by this contract.

CHANGES IN ORGANIZATION OF DISTRICT

17. While this contract is in effect no change, except as provided for in the water service contract, shall be made in the District either by inclusion or exclusion of lands, by partial or total consolidation or merger with another district,

by proceedings to dissolve, or otherwise, except upon the Contracting Officer's written assent thereto.

TITLE TO REMAIN IN THE UNITED STATES

18. Title to the distribution system constructed by the United States pursuant to this contract shall be and remain in the name of the United States until otherwise provided for by the Congress, notwithstanding the transfer hereafter of any of such works to the District for operation and maintenance.

TRANSFER OF CARE, OPERATION, AND MAINTENANCE OF SAN LUIS UNIT

19. The United States may transfer the San Luis Unit of the Central Valley Project or any portion thereof, other than distribution system, to the State of California for care, operation, and maintenance and such transfer shall not affect the rights or obligations of either party to this contract.

LAND INELIGIBLE TO RECEIVE WATER UNDER THE WATER SERVICE CONTRACT NOT TO RECEIVE WATER SERVICE THROUGH THE DISTRIBUTION SYSTEM

20. No water shall be delivered through the distribution system to any lands or persons not eligible under the terms of Articles 23, 24, and 25 of the water service contract to receive water made available pursuant to that contract.

CONTINGENT UPON APPROPRIATIONS OR ALLOTMENT FUNDS

21. The expenditure of any money or the performance of any work by the United States herein provided for which may require appropriations of money by the Congress or the allotment of funds shall be contingent upon such appropriations or allotment being made. The failure of the Congress so to appropriate funds or the absence of an allotment of funds shall not relieve the District from any obligations then

accrued under this contract, and no liability shall accrue to the United States in case such funds are not appropriated or allotted.

RULES AND REGULATIONS

22. The Secretary reserves the right to make, after consultation with the District, such rules and regulations consistent with the provisions of this contract, the laws of the United States and State of California, and to add to and modify them as may be deemed proper and necessary to carry out this contract, and to supply necessary details of its administration which are not covered by express provisions of this contract. The District agrees to observe such rules and regulations.

OFFICIALS NOT TO BENEFIT

23. (a) No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise herefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

(b) No official of the District shall receive any benefit that may arise by reason of this contract other than as a landowner within the District and in the same manner as other landowners within the District.

NOTICES

24. Any notice or announcement which the provisions hereof con-template shall be given to one of the parties hereto by the other shall be deemed to have been given if deposited in the United States Post Office on the part of the United States in a franked or postage-prepaid envelope addressed to the District at its office in Fresno, California, and on the part of the District in a postage-prepaid envelope addressed to the Bureau of Reclamation, United States Department of the Interior, Sacramento, California, or such other address as from time to time may be designated by the Contracting Officer in

a written notice to the District: Provided, however, That this article shall not preclude the effective service of any such notice or announcement by other means.

ASSIGNMENT—WAIVERS—REMEDIES NOT EXCLUSIVE

25. (a) The provisions of this contract shall apply to and bind the successors and assigns of the respective parties, but no assignment or transfer of this contract or any part thereof or interest therein shall be valid until and unless approved by the United States.

(b) Any waiver at any time by either party to this contract of its rights with respect to a default, or any other matter arising in connection with this contract, shall not be deemed to be a waiver with respect to any subsequent default or matter.

(c) Nothing contained in this contract shall be construed as in any manner abridging, limiting, or depriving the United States or the District of any means of enforcing any remedy, either at law or in equity, for the breach of any of the provisions hereof which it would otherwise have.

DETERMINATIONS

26. (a) Where the terms of this contract provide for action to be based upon the opinion, or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations.

(b) In the event the District questions any factual determination made by any representative of the Secretary as required in the administration of this contract, any findings as to the facts in dispute thereafter made by the Secretary shall be made only after consultation with the District's board of directors.

(c) Except as otherwise provided herein, the Secretary's decision on all questions of fact arising under this contract shall be conclusive and binding upon the parties hereto.

COVENANT AGAINST CONTINGENT FEES

27. The District warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon as agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling-agencies maintained by the District for the purpose of securing business. For breach or violation of this warranty the United States shall have the right to annul this contract without liability or in its discretion to add to the contract repayment obligation or consideration the full amount of such commission, percentage, brokerage, or contingent fee.

ASSURANCE RELATING TO VALIDITY OF CONTRACT

28. Promptly after the execution and delivery of this contract, the District shall file and prosecute to a final decree, including any appeal therefrom to the highest court of the State of California, in a court of competent jurisdiction a special proceeding for the judicial examination, approval, and confirmation of the proceedings of the District Board of Directors and of the District leading up to and including the making of this contract and the validity of the provisions thereof, and this contract shall not be binding on the United States until said proceedings and contract shall have been so confirmed by a court of competent jurisdiction or pending appellate action in any court if ground for appeal be laid: Provided, That nothing herein contained shall require the District to assume the responsibility for prosecuting judicial review beyond the highest court of the State of California.

PERFORMANCE OF WORK WITH CONTRIBUTED FUNDS

29. (a) Pursuant to the Act of March 4, 1921 (41 Stat. 1367, 1404), the United States will perform with funds contributed by the District any construction or maintenance work on the distribution system not otherwise provided for by this contract, or any construction work covered by this contract but for which funds may not be available: Provided, That the undertaking of any such work and the plans therefor must be approved by the United States. When the undertaking of such work is approved, funds therefor shall be advanced by the District as may be directed by the Contracting Officer and there shall be submitted to the United States a certified copy of the resolution of the Board of Directors of the District describing the work to be done and authorizing its performance with contributed funds.

(b) After completion of any work so undertaken the District will be furnished with a statement of the cost thereof, and any unexpended balance of the funds will be refunded to the District or applied as otherwise directed by the District, and the amount by which the cost of such work exceeds the amount of the funds advanced by the District therefor shall be paid by the District to the United States as the Contracting Officer may direct.

EQUAL EMPLOYMENT OPPORTUNITY

30. (a) During the performance of this contract, the District, hereinafter in this article referred to as the contractor, agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall

include, but not be limited, to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the. provisions of this non-discrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, as amended, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

(5) The contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, as amended, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's noncompliance with the nondiscrimination-clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, as amended, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions; including sanctions for noncompliance: *Provided, however*, that in the event "the contractor becomes involved in, or is threatened with, litigation with a sub-contractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation-to protect the interests of the United States.

(b) Inclusion of the Equal Opportunity clause may be by reference to Section 301 of Executive Order 10925, dated March 6, 1961, as amended. Subcontracts below the second tier, other than subcontracts calling for construction work at the site of construction are exempt from inclusion of the clause.

IN WITNESS WHEREOF, the parties hereto have executed this contract the day and year first above written.

APPROVED AS TO LEGAL
FORM AND SUFFICIENCY

/s/ [Illegible]
Principal Solicitor
Department of the Interior

THE UNITED STATES OF AMERICA

By: [Illegible]
Regional Director, Region 2
Bureau of Reclamation

WESTLANDS WATER DISTRICT

By: [Illegible]
President

(SEAL)
Attest:

/s/ [Illegible]
Secretary

Approved:

[Illegible]
Secretary of the Interior

[Exhibits Omitted]

WESTLANDS WATER DISTRICT

RESOLUTION NO. 150-64

WHEREAS, on June 5, 1963 this District entered into a contract with the United States of America for a water supply for the lands of Westlands Water Distract from the San Luis Unit of the Central Valley Project; and

WHEREAS, In order to utilize said water supply It will be necessary for the District to have a system constructed for the distribution of water to and drainage of water from the lands within the District; and

WHEREAS, it is contemplated that the extent of the drainage facilities, and possibly some water distribution facilities, required for the lands within the District will increase over a period of years and, therefore, it. Is desirable that provision for their ultimate construction be made at this time; and

WHEREAS, this District did on the 20th day of November, 1963 approve a form of repayment contract under the terms of which the United States would construct a water distribution and drainage system to serve the lands of the District; and

WHEREAS, since said approval by the District, certain changes have been made in said form of contract by the United States Bureau of Reclamation and a revised draft of contract marked Draft 4/8-1964 embodying such changes has been submitted to this District for approval; and

WHEREAS, the lands within the District are in great need of water and It is of extreme urgency that the water distribution facilities and the portion of the drainage works presently required be completed to the fullest extent possible at the time water is available from the San Luis Canal late in the year 1967 or early in the year 1968.

NOW, THEREFORE, BE IT RESOLVED, that the draft of contract entitled "Contract Between the United States and

Westlands Water District Providing for the Construction of a Water Distribution and Drainage Collector System" and marked Draft 4/8-1964 be and it is hereby, approved subject to such minor editorial changes, if any, as swim required in the judgment of the Manager-Chief Counsel of the District; and

BE IT FURTHER RESOLVED, that upon approval of said draft of contract by the Secretary of the Interior, the Manager-thief Counsel of the District is authorized and directed to submit said form of contract to the California Districts Securities Commission for approval and to do any and all things required by law to be done to permit execution of said contract on behalf of this District; and

BE IT FURTHER RESOLVED, that upon completion of all steps required by law to be token prior to the execution thereof, the President and Secretary of this District be, and they are hereby, authorized to execute said contract for and on behalf of Westlands Water District.

AYES: GIFFEN, BAKER, BENSON, DIENER, van LOSEN SELS

NOES: NONE

ABSENT: ROBINSON

STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

STEWART P. SMITH, does hereby certify that he is the duly appointed, qualified and acting Secretary of WEST-LANDS WATER DISTRICT, a public district organized under the laws of the State of California with Its offices at Fresno, California; that the foregoing Resolution Humber 150-64 was duly and regularly adopted by the Board of Directors of WESTLANDS WATER DISTRICT at a meeting of said Board of Directors duly called and held on the 13th day of April, 1964 at the offices of said WESTLANDS WATER DISTRICT, at which a quorum of said Directors was present and acting; and that said Resolution Is still in full force and effect.

DATED: April 14, 1964

/s/ Stewart P. Smith
STEWART P. SMITH
Secretary, Westlands Water District

(SEAL)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

RECORDED IN OFFICIAL RECORDS OF
FRESNO COUNTY, CALIFORNIA
At 10 min. past 4 p.m.
Aug 7, 1969
J.L. Brown, County Recorder Fee $10.00

Exhibit B
Page 1

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

AGREEMENT PERTAINING TO
SALE OF EXCESS LANDS

THIS AGREEMENT, made this 12 day of June, 1969, under the provisions of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, all collectively herein styled the Federal reclamation laws, between THE UNITED STATES OF AMERICA, herein styled "the United States", represented by the Secretary of the Interior or his duly authorized representative, and Edwin R. O'Neill and Kristan L. O'Neill, husband and wife herein styled "the Landowner";

WITNESSETH THAT:

WHEREAS, pursuant to the Federal reclamation laws, the United States and the Westlands Water District have entered into a contract herein referred to as the District Contract, dated June 5, 1963, a copy of which is on file in the office of said District in the City of Fresno, County of Fresno, California, of which articles 23, 24, and 25 provide for the execution of certain contracts by owners of irrigable excess land within the District and the valuation and conditions of sale of such land, and of article 23 which, among other things,

provides in part as follows:

> No water made available pursuant to this contract shall be furnished to any excess lands as defined in article 25 hereof unless the owners thereof shall have executed valid recordable contracts in form prescribed by the United States, agreeing to the provisions of this article and Articles 24 and 25 of this contract, agreeing to the appraisal provided for in Article 24 hereof and that such appraisal shall be made on the basis of the actual bona fide value of such lands at the date of the appraisal without reference to the construction of the Project, all as hereinafter provided, and agreeing to the sale of such excess lands under terms and conditions satisfactory to the Secretary and at prices not to exceed those fixed as hereinafter provided.

WHEREAS, the Landowner is the owner of certain land situated in the County of Fresno, California, and within the territorial limits of and incorporated into and as a part of, the District; and

WHEREAS, the Landowner, pursuant to article 25 of the District Contract, has designated as nonexcess land a portion of the aforesaid land and has filed with the District a written description thereof;

NOW, THEREFORE, in consideration of the direct and indirect benefits to be derived under the terms of the District Contract; as implemented by this agreement, by all of the lands of the Landowner within the District, and as an inducement to the United States to make water and distribution facilities available to the District for the excess land of the Landowner, the Landowner agrees and covenants for himself, his executors, administrators, heirs, successors, and assigns, all of which agreements and covenants are and each of them hereby is made a charge upon the excess land of the Landowner to run with the title to the said excess land, as follows:

1. Each term defined in the District Contract shall, when used herein, have the same meaning as that which it has when used in the District Contracts

2. The Landowner is the owner of excess land situated in Fresno County, California, and particularly described as follows:

PARCEL ONE: That portion of the north half (N 1/2) of Section Seven (7), Township Eighteen (18) South, Range Seventeen (17) East, Mount Diablo Base and Meridian, lying southeast of the southeasterly right of way line of the Fresno Coalinga Road, as said road is described in the deed to the County of Fresno recorded September 22, 1924 in Book 492 at Page 41, as Document No. 25290, Fresno County Official Records; BUT EXCEPTING THEREFROM that portion thereof lying within Butte Avenue, a deeded road, said Butte Avenue being described in the right of way deed to the County of Fresno recorded November 8, 1948 in Book 2689 at Page 102, as Document No. 52265, Fresno County Official Records; containing an area of 93 acres, more or less, after said exception.

PARCEL TWO: The southwest quarter (SW 1/4) of Section Eight (8), Township Eighteen (18) South, Range Seventeen (17) East, Mount Diablo Base and Meridian, BUT EXCEPTING THEREFROM that portion of the west half of the southwest quarter of the southwest quarter (W 1/2 SW 1/4 SW 1/4) of said Section Eight (8) lying North of the south 35 feet thereof; ALSO EXCEPTING THEREFROM that portion thereof lying within Butte Avenue, a deeded road, said Butte Avenue being described in the right of way deed to the County of Fresno recorded November 8, 1948 in Book 2689 at Page 102 as Document No. 52265, Fresno County Official Records; containing an area of 140 acres, more or less, after said exception:.

PARCEL THREE: The southeast quarter (SE 1/4) of Section Eight (8), Township Eighteen (18) South, Range Seventeen (17) East, Mount Diablo Base and Meridian, containing an area of 160 acres, more or less.

PARCELS ONE, TWO and THREE containing a combined area of 393 acres, more or less.

Each of said parcels being subject to existing rights of way in favor of the public or third parties for highways, roads, railroads; telegraph, telephone and electrical transmission lines and canals, laterals, ditches, flumes, siphons and pipelines on, over and across said premises.

Excepting and reserving as to each of said parcels all oil, gas and minerals and other hydrocarbon substances in and under said land, together with the right of ingress and egress thereto, as necessary or desirable, for the exploration, development and exploitation of all such reserved rights; Provided; that upon exercise of any of said rights of ingress and egress for exploration, development and exploitation the owner of said mineral rights shall fully indemnify the surface owner for any and all damages or losses resulting therefrom or caused thereby. This indemnification provision shall be binding upon the landowner herein, his executors, administrators, heirs, and assigns, and any conveyance of mineral rights by the landowner herein shall specifically contain such a provision for indemnification.

3. The appraised value of said excess land within the meaning of the District Contract and this contract shall be determined in a manner to be prescribed by the Secretary of the Interior. At the option of the Landowner, however, the said value may be determined, subject to the approval thereof by the Secretary, by three appraisers, one designated by the United States, one designated by the District, and the third designated by the first two, or upon their failure to agree by

the presiding Justice of the Fifth District Court of Appeals of the State of California. Said excess land shall be appraised at its fair market value, but in the appraisal no value shall be given such land on account of the existing or prospective availability of water or service from the Central Valley Project. The value of the improvements on the land at the time of appraisal shall be included therein, but shall also be set forth separately in such appraisal.

4. The Landowner agrees that the land described in article 2 hereof shall be subject to the terms of this contract and the terms of articles 23, 24, and 25 of the District Contract and said articles are hereby made a part of this agreement by reference.

5. All rights of the Landowner to receive Project water for his excess land shall be subject to the provisions of the District Contract and this contract.

6. The Landowner agrees that if and when any or all of the land described in article 2 hereof is sold by or for him, it will be sold at prices not exceeding the appraised value thereof as fixed pursuant to the procedure set forth in article 3 or as said appraised value may be modified as hereinafter provided, plus the appraised value of the crops growing on said land at the date of sale. The value of crops growing on the land at the date of sale shall be included but shall be set forth separately in the appraisal.

7. If an appraisal has been made pursuant to article 3 prior to the sale of the land described in article 2 of this agreement, either the Landowner or the United States may require that said land or any part thereof be again appraised at any time prior to the sale thereof, and such appraisals shall be made as provided in article 3 hereof. The cost of the first two appraisals of each tract of excess land shall be paid by the United States. The cost of each appraisal thereafter shall be paid by the party requesting such appraisal. The value established by any new appraisal shall supersede the value

established by the existing appraisal on the date of the receipt of a registered letter to the Landowner notifying him of said new appraisal.

8. None of the excess land described in article 2 hereof shall be entitled to receive water nor shall service be made available to such land pursuant to the District Contract, except while owned by the Landowner, unless the same shall have been sold to a person who, as the owner of such land, is qualified as a nonexcess Landowner to receive Project water under the provisions of the Federal reclamation laws, the District Contract, and this agreement in full compliance with the provisions thereof.

9. When any of the excess land covered by this agreement shall have been transferred in accordance with the provisions hereof to a person who, as the owner of such land, qualifies as a nonexcess Landowner under the District Contract, the land so transferred shall thereupon be subject to and governed by the terms and provisions of said District Contract applicable to nonexcess lands.

10. The terms "sold" and "transferred", as used in articles 6, 8, and 9 of this agreement, include conveyance by way of bona fide gift, dividend, or otherwise, if the consideration, if any, received by the Landowner does not exceed the appraised value as determined pursuant to article 3 hereof or the reappraised value as determined pursuant to article 7 hereof.

11. The Landowner hereby irrevocably makes, constitutes, and appoints the Secretary of the Interior, United States Department of the Interior, his true and lawful attorney for him in his name, place, and stead, to sell and transfer at any time following the expiration of a period of ten years immediately following the date of execution of this agreement, all of his then right, title, and interest in and to any or all of the excess land described in article 2 hereof, owned by

the Landowner, beneficially or otherwise, by such instrument as may be agreed upon between the Secretary and any other parties: *Provided*, That such sale shall not be made at a price which is less than the appraised value as fixed pursuant to the procedure set forth in article 3 hereof, or such appraised value as amended pursuant to article 7 hereof: *Provided further*, That such sale of said excess land shall be only for cash or upon terms satisfactory to the Landowner. The Landowner gives and grants irrevocably unto his said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done to transfer title to said property, as fully to all intents and purposes as the Landowner might or could do if personally present, with full power of substitution or revocation, hereby ratifying and confirming all that said attorney or his substitute shall lawfully do, or cause to be done, by virtue of these presents.

12. In the event that the Congress of the United States repeals the so-called excess-land provisions of the Federal reclamation laws, this agreement shall no longer be of any force or effect, and, in the event that the Congress amends the excess-land provisions or other provisions of the Federal reclamation laws, the United States agrees, at the option of the Landowner, to negotiate amendments of the appropriate articles of this agreement, all consistently with the provisions of such repeal or amendment.

13. In the event that the District Contract shall not become effective, or, through no breach on the part of the District, should terminate prior to the expiration of the term thereof, then this agreement shall also terminate: Provided, That any recordable contract relating to the excess land described in article 2 hereof shall similarly provide that the power of attorney conferred upon the Secretary for the disposal of said land shall become effective ten years from the date of the execution of this recordable contract: Provided further, That the computation of the ten-year period prescribed in article 11

hereof shall not include any year or years in which water or service from the Project may not be available to the land involved through no fault of the District or the Landowner.

Exhibit B
11

IN WITNESS WHEREOF, the parties have caused this agreement to be executed the day and year first above written.

THE UNITED STATES OF AMERICA
By /s/ _____
Regional Director, Region 2
Bureau of reclamation

LANDOWNER

/s/ Kristan L. O'Neill
Kristan L. O'Neill

LANDOWNER

/s/ Edwin R. O'Neill
Edwin R. O'Neill
Address: P.O. Box 787
Fresno, California 93712

ACKNOWLEDGMENT

STATE OF CALIFORNIA) ss.
COUNTY OF FRESNO)

On this 12 day of June, 1969, before me, Michael J. O'Neill, personally appeared Edwin R. O'Neill and Kristan L. O'Neill the person whose name is last subscribed to the within instrument and acknowledged that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this acknowledgment above written.

/s/ Michael J. O'Neill
Notary Public in and for the
County of Fresno, State of California
My commission expires _____

[Seal]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JUDGMENT
No. CV 79-106-EDP

BARCELLOS AND WOLFSEN, INC., et al.,
Plaintiffs,

v.

WESTLANDS WATER DISTRICT, et al.,
Defendants.

WESTLANDS WATER DISTRICT,
Counterclaimant and Cross-Claimant,

v.

BARCELLOS AND WOLFSEN, INC., et al.,
Counterclaim and Cross-Claim Dependants.

BARCELLOS AND WOLFSEN, INC., et al.,
Counterclaimants and Cross-Claimants,

v.

UNITED STATES OF AMERICA, et al.,
Counterclaim and Cross-Claim Defendants.

FRANK. ORFF, as representative of 1B Class,
Counterclaimant and Cross-Claimant,

v.

UNITED STATES OF AMERICA, et al.,
Counterclaim and Cross-Claim Defendant.

CONSOLIDATED
No. CV F-81-245-EDP

WESTLANDS WATER DISTRICT, et al.,
Plaintiffs-in-Consolidation.

v.

UNITED STATES OF AMERICA, et al.,
Defendants-in-Consolidation.

BARCELLOS & WOLFSEN, INC., et al.,
Plaintiffs,

v.

WESTLANDS WATER DISTRICT, et al.,
Defendants.

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Pursuant to the Stipulation for Compromise Settlement, effective as of Aug. 29, 1986, the Order, dated Oct. 1, 1986, and the Order, dated Dec. 30, 1986.

IT IS ADJUDGED, ORDERED, DECLARED AND DECREED as follows:

1. Definitions.

As used herein, the following words and phrases shall have the following meanings:

1.1. "1A Parties": Plaintiffs, the class representatives (in their individual and representative capacities) of the Area 1A Class, all landowners and water users in the Area IA Class and their predecessors and successors, and each other party to the extent such party owns, or uses water on, land in Area 1A;

1.2. "lB Parties": The class representative (in his individual and representative capacities) of the Area 1B Class, all landowners and water users in the Area 1B Class and their predecessors and successors, and each other party to the extent such party owns, or uses water on, land in Area 1B;

1.3. "2A Parties": The class representatives (in their individual and representative capacities) of the Area-2A Class, all landowners and water users in the Area 2A Class and their predecessors and successors, and each other party to the extent such party owns, or uses water on, land in Area 2A;

1.4. "2B Parties": The class representatives (in their individual and representative capacities) of the Area 2B Class, all landowners and water users in the Area 2B Class and their predecessors and successors, and each other party to the extent such party owns, or uses water on, land in Area 2B;

1.5. "1939 Act": The Reclamation Project Act of August 4, 1939, 53 Stat. 1187;

1.6. "1960 Act": The Act of June 3, 1960, 74 Stat. 156, authorizing the San Luis Unit of the Central Valley Project, as supplemented by the Act of June 15, 1977, 91 Stat. 225;

1.7. "1963 Contract": Contract number 14-06-200-495, dated June 5, 1963, entered into between the United States and the Original Westlands District, as supplemented by a memorandum dated February 15, 1915, both of which are attached hereto as Exhibit A;

1.8 "1965 Contract": number 14-06-200-2020A, dated April 1, 1965, entered into between the United States and the Original Westlands District, attached hereto as Exhibit B;

1.9. "1982 Act": The Reclamation Reform Act of October 12, 1982, 96 Stat. 1261;

1.10. "Area IA": The area of the Original Westlands District within the proposed initial service area of the San Luis Unit of the Central Valley Project, as depicted on Plate 1 in the report of the U.S. Bureau of Reclamation entitled "A Report on the Feasibility of Water Supply Development, San Luis Unit, Central Valley Project, California," dated May 1955, and transmitted to the Congress on December 17, 1956;

1.11. "Area 1B": The area of the Original Westlands District outside said proposed initial service area;

1.12. "Area 2A": The area of the Former Westplains District within Said proposed initial service area;

1.13. "Area 2B": The area of the Former Westplains District outside said proposed initial service area;

1.14. "Area I": All the lands in the Original Westlands District;

1.15. "Area II": All the lands in the Former Westplains District;

1.16. "Bookkeeping Account Period": The period of time covering June 30 through December 31, 1978, all of the years 1975, 1982, 1983, 1984, 1985, 1986 and the year 1987 through the end of the month in which this Judgment is entered;

1.17. "Cost Effective": In connection with Drainage Service Facilities, has reasonable costs in relation to the quantity of subsurface agricultural drainage water transported, treated or disposed of thereby; and, in connection with Drainage Reduction Programs, has reasonable costs in relation to the quantity of subsurface agricultural drainage water reduced thereby;

1.18. "Costs of Construction": Costs of design, preparation of plans and specifications, acquisition of real and personal property, and actual construction, excluding administrative, indirect and overhead costs;

1.19. "Discretionary Provisions of 1982 Act": Sections 203-208 of the 1982 Act;

1.20. "District": The Westlands Water District;

1.21. "Drain": The work which is referred to as the "San Luis interceptor drain" in Section 1 of the 1960 Act and defined as the "interceptor drain" in Article 1(d) of the 1963 Contract and which between March 13, 1968; and February 4, 1975, was partially constructed between Laguna Avenue in Fresno County and Kesterson Reservoir in Merced County;

1.22. "Drainage Plan": The plan described in Paragraph 6.1 of this Judgment;

1.23. "Drainage Reduction Program": Any facility or activity which reduces the amount of subsurface drainage water requiring drainage service in the District.

1.24. "Drainage Service Facility": The Drain or any significant drainage service facility constructed or acquired by either the united States or the District as partial or full alternatives to the Drain providing drainage service for lands in the District;

1.25. "Drainage Trust Fund": The trust fund established by Paragraph 7.1 of this Judgment;

1.26. "Existing Trust Fund": The trust fund established by the Stipulated Agreement, as amended, between the Federal Parties and the District, attached hereto as Exhibits C, D, E, F and G;

1.27. "Federal Parties": The United States Department cf the Interior; the Bureau of Reclamation of the Department of the Interior; the Secretary of the Interior; the Assistant Secretary of the Interior for Water and Science; the Commissioner of Reclamation; and the Regional Director of the Bureau of Reclamation for the Mid-Pacific Region;

1.28. "Former Westplains District: The Westplains Water Storage District, as it existed immediately prior to June 29, 1965;

2.29. "Interim Contract": (a) Any temporary short-term water service contract between the District and the United States with respect to the period between June 30, 1980, and December 31, 1981, and (b) the Stipulated Agreement between the United States and the District, approved September 16, 1981, in Westlands Water District v. United States et al., U.S. Dist. Ct., E.D. Calif. No. CV-F-81-245-EDP, attached hereto as Exhibit C, and the amendments thereto approved on September 10,

1982, March 14, 19E5, November 5, 1985, and February 11, 1986, attached hereto as Exhibits D, E, F and C;

1.30. "Internal Allocation Rule": Any water allocation regulation or policy adopted by the District;

1.31. "Internal Pricing Rule": Any water pricing regulation or policy adopted by the District;

1.32. "Merger Law": The Westlands Water District Merger Law, California Water Code sections 37800 through 37856;

1.33. "MCI Uses": Uses other than agricultural use;

1.34. "Original Westlands District": The Westlands Water District, as it existed immediately prior to June 29, 1965;

1.35. "Overpayment Refund Account": The special account established by Paragraph 8.4 of this Judgment;

1.36. "Statutory Interest": Simple interest at the rate or rates established pursuant to Section 12 of the Contract Disputes Act of 1978 (92 Stat. 2389, 41 U.S.C. §611).

2. Termination of Stipulated Agreement and Duration of Judgment.

The Stipulated Agreement identified in Paragraph 1.29(b) above shall terminate at the end of the month in which this Judgment is entered. This Judgment shall govern the rights and duties of all parties for its term commencing the first day of the month following entry of this Judgment and terminating December 31, 2007, except as otherwise provided in Paragraph 13.3(c) below and Exhibit K of this Judgment.

3. Enforcement of Judgment.

A party may obtain relief from a violation of this Judgment only by (a) the filing of a new action, or (b) the filing of a motion in these present actions. Either of these proceedings

against the Federal parties shall, except as otherwise specifically limited by Paragraphs 6.1, 12.1.1, 12.1.2 and 12.3 of this Judgment, be for the sole purpose of seeking an order directing the Federal parties to perform in accordance with the express terms of this Judgment; provided, that any other appropriate relief may be obtained against the Federal parties by the filing of a new action for violation of (a) Paragraph 5 below or (b) any contract or other right or obligation arising independently of this Judgment, notwithstanding that (i) it is required to be performed by this Judgment, (ii) its future creation is anticipated or encouraged by this Judgment, or (iii) it is otherwise a subject of this Judgment. A motion in these present actions to obtain relief from an alleged violation of this Judgment may be filed only after 60 days prior written notice to all other parties that such a motion will be filed if another party or other parties fail or refuse to perform in the manner described in said notice. The parties entitled to file such a motion and to receive such prior written notice thereof in these present actions shall be limited to the Area representatives provided for in Paragraph 22 below (who shall represent the interests of the class members within the areas they represent), the United States, the District, and any landowners or water users who have heretofore appeared in these present actions on their own behalf. The parties shall not seek judicial enforcement of this Judgment in any other manner than described above. During the term of this Judgment, each party shall perform all acts it is obligated hereunder to perform. This Judgment shall not alter or impair, or deprive any party of, any existing legal rights or confer on any party any right except as expressly provided herein.

4. 1963 Contract.

4.1. Beginning the first day of the month after this Judgment is entered, the District and the United States shall perform the 1963 Contract; provided, that the District waives the right to make payment for water requested and delivered

under Articles 4(c) or 8 of said contract at the rate provided in Article 6 thereof so long as the rate charged for said water does not exceed the applicable Central Valley Project water rate as of the date of delivery; provided further, that to facilitate and implement the existing water conservation policies of the United States, (a) Article 1(f) of said contract shall be revised to state: "'year' shall mean the period commencing March 1 of each year through the last day of February of the following year"; (b) Article 6(b) of said contract shall be revised by substituting "March 1" for "January 1" and "September 1" for "July 1"; and (c) notwithstanding the provisions of Article 3(d) of said contract, the quantity of water the United States shall be obligated to furnish, and the District to pay for, pursuant to Article 3 of said contract during the period commencing March 1, 2007, and ending December 21, 2007, shall be 611,000 acre-feet. The 1963 Contract is a valid, enforceable and implementable contract entitling the District through the end of 2007 to water and other service by the United States as specified therein.

4.2. The District acknowledges that it entered into the 1963 Contract for the benefit of Areas IA and 1B and the lands therein. The District will enforce the prior rights of said areas to the benefits of said contract and acknowledges that water users in Areas 2A and 2B may purchase water under the 1963 Contract not purchased by water users in Areas IA and 1B as provided in this Judgment. To the extent that water under the 1963 Contract is purchased by a water user in Area 2A or Area 2B, the District shall collect from such water user and pay the United States for such water the water service rate set forth in Article 6(a) of the 1963 Contract, Paragraph 4.4 below or 4.5.4 below, whichever is applicable, plus a $0.50 per acre foot drainage service charge, until such water user becomes entitled to water service pursuant to the long-term contract described in Paragraph 12.1.1 below, whereupon the contracting improvement district of the District shall collect from such water user and pay the United States for

such water the applicable rates set forth in such long-term contract.

4.3. The District shall not enter into any contract which would modify the rights and obligations under the 1963 Contract prior to 2008, except with the concurrence of Area I as provided in Paragraph 22.5 below; provided, that such concurrence nay be obtained only by lack of objection by Area I representatives and not by an advisory election under said paragraph.

4.4. The agricultural water service component of the rates to be paid to the United States for water delivered under Article 3 of the 1963 Contract to lands which become subject to the Discretionary Provisions of the 1982 Act shall be the higher of (a) $7.50 per acre foot or (b) the appropriate rate as of the date of delivery established pursuant to the 1982 Act.

4.5. Water deliveries under the 1963 Contract for M&I Uses shall be in accordance with Paragraph 4.5.1 through 4.5.4 below.

4.5.1. Such water shall be quantified and identified in the schedule or any revision thereof submitted by the District in accordance with Article 4(a) of the 1963 Contract;

4.5.2. Such water shall be measured at canalside delivery points established pursuant to Article 9 of the 1963 Contract which are used exclusively to deliver water for M&I Uses, as determined by the United States, with equipment installed, operated and maintained by the United States. The District shall measure all water furnished by the District for M&I Uses at other delivery points with equipment installed, operated and maintained by the District. Said equipment and its installation, service and use shall be approved by the United States. The United States shall have full access at all reasonable times to inspect said measuring equipment to determine the accuracy and conditions thereof and any errors in measurements disclosed by said inspections shall be ad-

justed. If said facilities are found to be defective or inadequate they shall be adjusted, repaired or replaced by the District. In the event the District neglects or fails to make such repairs or replacements within a reasonable time as may be necessary to satisfy the operating requirements of the United States, the United States may cause repairs or replacements to be made and the costs thereof charged to the District, which charge shall be paid to the United States before April 1 of the year following that in which the cost was incurred and a statement thereof furnished by the United States;

4.5.3. The Federal Parties shall submit a report to the District as to the quantity of water the United States measures and the District shall submit a report to the Federal Parties as to the quantity of water the District measures. Said reports shall be submitted on or before the 10th day of each month following the month in which the water is measured;

4.5.4. Such water shall be paid for in accordance with Article 6(b) of the 1963 Contract at the applicable Central Valley Project water rate as of the date of delivery.

5. Provisional Water Service.

5.1. The provisions of Paragraphs 5.2 through 5.3 below are included in this Judgment in light of the facts recited in this Paragraph 5.1, as agreed to by the parties. Each year from 1964 through 1981, the Federal Parties have permitted the District to take various quantities of water from the Mendota Pool pursuant to annual contracts to supplement the water provided to the District under the 1963 Contract. Since 1965 when the Former Westplains District was merged into the Original Westlands District, the Federal Parties have recognized that a firm water supply from the San Luis Unit of 200,000 acre feet per year in addition to the water from the San Luis Unit provided for in the 1963 Contract and a firm water supply of 50,000 acre feet per year from the Mendota

Pool, are necessary within the boundaries of the District as it was expanded by the merger. Such additional water supplies have consistently been allocated and provided to the District by the Federal Parties each year from 1972 through 1961, inclusive, pursuant to a series of annual contracts. Thereafter, such additional water supplies have been provided pursuant to the Stipulated Agreement, as amended, Exhibits C, D, E, F and G attached hereto. The District has claimed that, pursuant to the provisions of the memorandum from Kenneth Holum, Assistant Secretary of the Interior, Water and Power Development, to Stuart Udall, Secretary of the Interior, dated October 4, 1965, approved by Secretary Udall on October 7, 1964, and related activities, it is entitled as of right to both of these additional supplies of water, a claim which the United States disputes herein. The parties have agreed to settle this claim by recognizing the claim for the purposes of this settlement only to the limited extent set forth in Paragraphs 5.2 through 5.3 below and subject to the provisions of Paragraph 14.1.1 below.

5.2. In addition to the quantity of water specified in Article 3 of the 1963 Contract, the District shall be entitled to provisional water service from the United States of 200,000 acre feet per year from the San Luis Unit and 50,000 acre feet per year from the Mendota Pool under the conditions specified in Paragraphs 5.2.1 through 5.2.4.7 below.

5.2.1. The District shall pay the United States for water delivered to lands which are not subject to the discretionary provisions of the 1982 Act the Central Valley Project water rates applicable to the District as of the date of delivery.

5.2.2. The District shall pay the United States for water delivered to lands which are subject to the Discretionary Provisions of the 1982 Act the higher of (a) the rates payable under Paragraph 5.2.1 above or (b) the appropriate rate established pursuant to the 1982 Act.

5.2.3. The District shall pay the United States for water delivered for M&I Uses at the applicable Central Valley Project water rates as of the date of delivery.

5.2.4. Provisional water service under this Paragraph 5 shall commence the first day of the month after this Judgment is entered and end February 28 next following the conclusion of the action entitled *Contra Costa Water District v. Donald Hodel, as Secretary of the Interior*, U.S. Dist. Ct., N.D. Calif., Civil No. C-75-2508-SW, unless said action is concluded by a final dismissal with prejudice, in which event said provisional water service shall end two years after such dismissal. All other terms and conditions of such provisional water service shall be the same as under the "Contract between the United States and Westlands Water District for Temporary Water Service from San Luis Unit and Mendota Pool," R.O. Draft 4/10-1981, (hereinafter "Draft Contract") attached to the Stipulated Agreement identified in Paragraph 1.29(b) above (Exhibit C hereto), except as modified in Paragraphs 5 and 7 of the Stipulated Agreement and further modified in Paragraphs 5.2.4.1 through 5.2.4.7 below.

5.2.4.1. No change in the rates to be paid for water delivered for agricultural use or M&I Uses shall be effective for any year unless written notice of the estimated rate is given to the District on or before the preceding September 1 and written notice of the actual rate is given to the District on or before the preceding December 1.

5.2.4.2. The following is substituted for Article 6(c) of the Draft Contract:

> "By February 1 of each year, the District shall make any additional payment it is obligated to make for the year."

5.2.4.3. The following is substituted for Article 15 of the Draft Contract:

> "(a) The parties agree that the delivery of irrigation water or the use of Federal facilities pursuant to this

contract is subject to the acreage and ownership limitations and pricing provisions of reclamation law, as amended and supplemented, including but not limited to the 1982 Act.

"(b) The Contracting Officer shall have the right to make, after an opportunity has been offered to the Contractor for consultation, rules and regulations consistent with the provisions of this contract, the laws of the United States and the State of California, to add to or to modify them as may be deemed proper and necessary to carry out this contract, and to supply necessary details of its administrations which are not covered by express provisions of this contract. The Contractor shall observe such rules and regulations."

5.2.4.4. The following is substituted for Article 19 of the Draft Contract:

"Where the terms of this contract provide for action to be based upon the opinion or determination of either party to this contract, whether or not stated to be conclusive, said terms shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations. In the event that the Contractor questions any factual determination made by the Contracting Officer, the findings as to the facts shall be made by the Secretary only after consultation with the Contractor and shall be conclusive upon the parties."

5.2.4.5. The following is substituted for Article 20 of the Draft Contract:

"The Contractor shall pay a late payment charge on installments or charges which are received after the due date. The late payment charge percentage rate calculated by the Department of the Treasury and published quarterly in the Federal Register shall be used; provided, that

the late payment charge percentage rate shall not be less than 0.5 percent per month. The late payment charge percentage rate applied on an overdue payment shall remain in effect until payment is received. The late payment rate for a 30-day period shall be determined on the day immediately following the due date and shall be applied to the overdue payment for any portion of the 30-day period of delinquency. In the case of partial late payments, the amount received shall first be applied to the late charge on the overdue payment and then to the overdue payment."

5.2.4.6. Article 31 of the Draft Contract is deleted.

5.2.4.7. To facilitate and implement the existing policies of the United States, Article 1(d) of the Draft Contract shall be revised to state: "'Year' shall mean the period commencing March 1 of each year through the last day of February of the following year."

5.3. The District acknowledges that all water to which the District is entitled pursuant to Paragraph 5.2 above shall be for the benefit of the 2A Parties and the 2B Parties and the lands in Area 2A and Area 2B.

6. Drainage Service Facilities.

6.1. The Federal Parties, in consultation and cooperation with the District, shall develop, adopt and submit to the District by December 31, 1991, a Drainage Plan for Drainage Service Facilities, which shall have at least the elements set forth in Paragraphs 6.1.1 and 6.1.2 below; provided, that the remedies available to a party for an alleged breach of this paragraph by the Federal Parties shall be strictly limited to (a) the release to the District of the money then deposited in the Drainage Trust Fund, plus accumulated interest, pursuant to Paragraphs 7.1.8 and 7.1.8.1, below, and (b) the revival of

any claim against the United States of the right to drainage service or Drainage Service Facilities pursuant to and in accordance with the terms of Paragraph 14.1.2, below.

6.1.1. The Drainage Service Facilities included in the Drainage Plan shall (a) in the aggregate have sufficient capacity and capability to transport, treat as necessary, and dispose of, the annual quantity of subsurface agricultural drainage water from the District (not less than 60,000 acre feet and not more than 100,000 acre feet) required to be disposed of by December 31, 2007, as projected in the Drainage Plan, (b) be Cost Effective and financially feasible, and (c) be capable of construction, acquisition and operation in compliance with all applicable law.

6.1.2. The Drainage Plan shall contain a schedule for the initiation and completion of each Drainage Service Facility by the United States. Adherence to the schedule will be contingent upon approvals within the Executive Branch and authorizations and appropriations by the Congress.

6.2. If the United States determines to construct or acquire Drainage Service Facilities prior to development of the Drainage Plan, the Federal Parties shall develop a plan for such facilities. Such plan shall be developed in consultation and cooperation with the District and shall have the same elements as the Drainage Plan except for the required acre-foot capacity of the facilities.

6.3. Drainage Service Facilities heretofore constructed by the United States are and, unless hereafter otherwise provided by statute, will be a work or works "connected with water supply and allocated to irrigation" and not any "irrigation water distribution work" as those terms are used in Section 9(e) of the 1939 Act. Section 9(d) of the 1939 Act does not prohibit the Federal Parties from presently providing water service or drainage service under the 1963 Contract. Agreement by the District to repay the Costs of Construction

by the United States of Drainage Service Facilities under said Section 9(d) is not a condition precedent to the United States' or the Federal Parties' duty to perform any term of the 1963 Contract. A per acre foot drainage service charge is a legal and valid method of repayment of the Costs of Construction by the United States of Drainage Service Facilities.

6.4. Because they are the drainage counterpart of the main conveyance facilities of the San Luis Unit, Drainage Service Facilities authorized by the 1960 Act are not a part of "distribution systems and drains" as that term is used in Section 8 of the 1960 Act.

7. Drainage Trust Fund.

7.1. To aid in funding costs of Drainage Service Facilities and to encourage and expedite United States' construction or acquisition thereof, beginning the first day of the month after this Judgment is entered, the District shall establish, maintain and use the Drainage Trust Fund exclusively for the purposes and in accordance with the terms and conditions specifled in Paragraphs 7.1.1 through 7.1.9 below.

7.1.1. Beginning the second year after this Judgment is entered, the District shall levy $5 million per year by assessments on all lands within the District, and deposit the money collected into the Drainage Trust Fund. Said $5 million per year may be increased by the District with Area I and Area II, concurrence as provided in Paragraph 22.5 below. To the extent necessary to meet the payment obligations from the Drainage Trust Fund under Paragraphs 7.1.4 and 7.1.7 below, the District shall borrow and deposit additional money therein. The District may terminate the collection and deposit of said $5 million per year when the District Board of Directors finds and determines, based on reasonable projections of said payment obligations and of interest earned on the money in the Drainage Trust Fund, that there is sufficient money therein to meet said payment obligations.

7.1.2. Each year, the per acre average of said assessments levied by the District within (a) the territory encompassing Areas IA and 1B and lands adjacent thereto annexed to the District after June 29, 1965, shall be 1.7 times the per acre average of said assessments within (b) the territory encompassing Areas 2A and 2B and lands adjacent thereto annexed to the District after June 29, 1965. However, within each of the territories described in (a) and (b) in the preceding sentence, the District shall apportion said assessments as authorized by law, including but not limited to Water Code Sections 36577 and 36578.

7.1.3. The District Treasurer shall be trustee of the Drainage Trust Fund and shall make the payments required under Paragraphs 7.1.4 and 7.1.7 below. The trustee shall invest the money in the Drainage Trust Fund to earn the highest possible rate of interest in prudent, legally authorized investments pursuant to California Government Code Sections 53600-53663. The interest earned on said investment shall become part of the Drainage Trust Fund.

7.1.4. For each Federal fiscal year (hereinafter "fiscal year") the trustee shall pay the United States from the Drainage Trust Fund, in accordance with the procedure and to the extent stated in Paragraph 7.1.5 below, a progress payment of 35 percent of the estimated Costs of Construction by the United States during that fiscal year of Drainage Service Facilities. As to facilities constructed or acquired by the United States for drainage service which have capability to serve others in addition to capability as Drainage Service Facilities, the 35 percent progress payment to be paid from the Drainage Trust Fund shall be reduced to reflect the District's proportionate benefits from such facilities. The required progress payment to the United States from the Drainage Trust Fund for any fiscal year shall not exceed $500,000 per facility for design and preparation of plans and specifications and $15 million for total Costs of Construction

of all facilities. The progress payments in the aggregate shall not exceed $100 million. Accumulated payments from the Drainage Trust Fund under Paragraph 7.1.7 below shall be credited toward meeting both the District's fiscal year and aggregate progress payment obligations.

7.1.5. By July 1 of each year, the Federal Parties shall advise the trustee of the estimated Costs of Construction to be incurred by the United States during each quarter of the upcoming fiscal year. The trustee shall pay the United States the required portion of said estimated quarterly cost on October 1, January 1, April 1, and July 1 of that fiscal year, to the extent that the Congress has appropriated federal funds sufficient to cover the remainder of such estimated costs. In the event the trustee does not make such payment when due, the Federal Parties shall have the right to withdraw the required amount of money from the Drainage Trust Fund on behalf of the United States. At the end of each quarter, if the actual Costs of Construction incurred by the United States during such quarter were less than the estimated costs, there shall be an appropriate credit against the next quarterly progress payment obligation from the Drainage Trust Fund.

7.1.6. On October 1 and April 1 of each year, or at other times as agreed in writing by the Federal Parties and the trustee of the Drainage Trust Fund, the trustee shall provide a statement to the Federal Parties specifying the amount of money in the Drainage Trust Fund.

7.1.7. Upon the District's request, the Trustee shall pay the District from the Drainage Trust Fund:

(a)(i) the Costs of Construction, both before and after the date of this Judgment, of Cost Effective and financially feasible Drainage Service Facilities constructed or acquired by the District and the cost of Cost Effective and financially feasible Drainage Reduction Programs implemented by the District either before or after the

effective date of this Judgment, or (ii) the amounts needed to repay District funds, or the principal of money borrowed by the District, used either before or after the effective date of this Judgment to pay any of the foregoing costs;

(b) a maximum of $5 million which may be used for any one or more of the following: (i) to pay the costs of studies and investigations of drainage problems and solutions, either before or after the effective date of this Judgment; (ii) to repay District funds or the principal of money borrowed by the District to pay the costs described in (i) immediately above; (iii) to pay the interest cost of money borrowed by the District, either before or after the effective date of this Judgment, to pay the Costs of Construction (not exceeding a total of $30 million) of Drainage Service Facilities constituting "Alternative Means" under the agreement between the District and the U.S. Department of the Interior dated April 3, 1985 (a copy of which is attached hereto as Exhibit H); and

(c) the amounts needed to repay the principal of money borrowed and deposited into the Drainage Trust Fund by the District a required by Paragraph 7.1.1 above.

The District shall consult with the Federal Parties before incurring any Costs of Construction of Drainage Service Facilities or any costs of implementing Drainage Reduction Programs, or borrowing any money to pay such costs. Construction or acquisition by the District of Drainage Service Facilities or implementation by the District of Drainage Reduction Programs paid for with money from the Drainage Trust Fund shall reduce, by the amount of the design capacity of such facilities or by the design amount of drainage reduction resulting from such programs, the legal obligation

of the United States to the District, if any, to construct or acquire Drainage Service Facilities or provide drainage service.

7.1.8. The money then deposited in the Drainage Trust Fund, including accumulated interest, shall be released to the District free of any obligation to the United States if and when any of the conditions specified in Paragraphs 7.1.8.1 through 7.1.8.8 below occurs.

7.1.8.1. The Federal parties do not develop, adopt, and submit to the District the Drainage Plan by December 31, 1991.

7.1.8.2. The Congress has not authorized the appropriation of funds for the construction or acquisition of at least one Drainage Service Facility described in the Drainage Plan by December 31, 1993.

7.1.8.3. The Federal Parties have not commenced actual construction or acquisition of at least one Drainage Service Facility described in the Drainage Plan by December 31, 1996.

7.1.8.4. After the authorization referred to in Paragraph 7.1.8.2, the Congress for any two consecutive fiscal years does not appropriate funds for construction or acquisition 1 of Drainage Service Facilities.

7.1.8.5. After the Congress has appropriated funds for the construction or acquisition of Drainage Service Facilities, the Federal Parties do not diligently pursue construction or acquisition thereof.

7.1.8.6. The Federal Parties do not complete construction or acquisition of at least one Drainage Service Facility by the date provided in the Drainage Plan schedule.

7.1.8.7. The Federal Parties state that they will not develop or implement the Drainage Plan.

7.1.8.8. The Congress conditions future appropriations for Drainage Service Facilities on cost sharing arrangements different from those provided in Paragraph 7.1.4 above, and the District, after 30 days written notice to its landowners and water users and opportunity for hearing, gives written notice to the Federal Parties that it desires release of the money as provided in Paragraph 7.1.8. Such notice to the Federal Parties shall be given within six months of the effective date of, and shall specify, the Act of Congress giving rise to the District's right to a release of such money.

7.1.9. Each of the conditions specified in Paragraphs 7.1.6.1 through 7.1.8.7 above may be waived or the time extended by written agreement between the Federal Parties and the District, with Area I and Area II concurrence as provided , in Paragraph 22.5 below.

7.2. Upon release from the Drainage Trust Fund under Paragraph 7.1.8 above, the money not needed to discharge payment obligations previously incurred pursuant to Paragraph 7.1.7 above shall be paid by the District as a refund to the landowners whose 1 assessment payments were the original source of the money in amounts proportionate to such assessments.

7.3. Except as provided in Paragraph 7.3.2 below, on request of the District, the United States shall reimburse the District for the progress payments which were previously made by the District to the United States from the Drainage Trust Fund pursuant to Paragraph 7.1.4 above, plus Statutory Interest from the date each progress payment was made to the date on which the money in the Drainage Trust Fund is released to the District, with respect to any uncompleted Drainage Service Facility for which progress payments have been made if (i) for two consecutive fiscal years the United States has not incurred any Costs of Construction with respect to such facility and (ii) at the time of such request, the United States has not resumed and does not thereafter diligently

continue to incur Costs of Construction of such facility. Such reimbursement shall be accomplished by credits against water service payments due from the District to the United States, commencing the first day of the month after the Drainage Trust Fund is released to the District, until the total progress payments made pursuant to Paragraph 7.1.4 above have been reimbursed, with Statutory Interest on the unreimbursed amount starting the first day of said month. Thereafter, the District shall be entitled to no further credit for said progress payments made pursuant to Paragraph 7.1.4 above. 7.3.1. Notwithstanding the credits provided for in Paragraph 7.3 above, (a) water users in the District shall pay 1411 the District for water service the same amounts of money as they would have been required to pay for water service in the absence of said credits, and (b) at the time payments for such water service would have otherwise been made to the United States, the District shall deposit an amount of money equal to said credits into a special Assessment Refund Account of the District, which the District shall invest to earn the highest possible rate of interest in prudent, legally authorized investments pursuant to California Government Code Sections 53600-53683. Said interest shall become a part of said Assessment Refund Account. The money deposited into the Assessment Refund Account plus the interest I thereon shall be paid by the District periodically as soon as practicable as refunds to the landowners for the portion of their assessments not previously refunded from the released Drainage Trust Fund.

7.3.2. No reimbursement shall be made to the District pursuant to Paragraph 7.3 above of any progress payment previously made from the Drainage Trust Fund for any Drainage Service Facility if it is financially feasible for the District to complete construction and to operate and maintain such facility. In such event, the District shall have the right, but not the obligation, to complete the construction of, and to operate and maintain, such facility.

7.4. Unless and until one of the conditions specified in Paragraphs 7.1.8.1 through 7.1.8.8 above occurs, the parties shall not seek judicial relief based on any claim that the United States or the Federal Parties have any statutory, contractual or other obligation, or are violating any such obligation, to construct Drainage Service Facilities or to provide drainage service.

7.5. Beginning upon completion of construction or acquisition by the United States of any Drainage Service Facilities included in the Drainage Plan and continuing through December 31, 2007, the District shall pay the United States for drainage service, in addition to the $0.50 per acre foot drainage service charge under the 1963 Contract, a drainage service charge per acre loot of Central Valley Project water delivered to the District sufficient, when combined with the $0.50 per acre foot charge, to cover the District's share of the operation and maintenance costs of such Drainage Service Facilities. Such additional charge shall be adjusted by the Federal Parties annually in subsequent years after payment begins by the same percentage as the change in the annual operation and maintenance costs of said Drainage Service Facilities; provided, that no increase in such charge shall be effective for any year unless written notice of the estimated increase is given by the Federal Parties to the District on or before September 1 of the previous year and written notice of the actual increase is given by the Federal Parties to the District on or before December 1 of the previous year. The United States shall credit the total drainage service charges collected, first, to payment of the District's share of the operation and maintenance cost of said Drainage Service Facilities and, second, to the District's share of the construction costs of said facilities.

7.6. During the duration of this Judgment, the District shall not pay a total of more than $100 million (exclusive of any interest other than the $5 million referred to in Paragraph

7.1.7(b) above) for Costs of Construction of Drainage Service Facilities and costs of implementing Drainage Reduction Programs by either or both the District and the United States. If, however, the United States and the District agree to an amount greater than $100 million and the Area I and Area II concurrences are obtained as provided in Paragraph 22.5, the District shall pay such additional amount.

7.7. Nothing in Paragraph 6 above or this Paragraph 7 shall be deemed to prevent the Congress from conditioning future appropriations for Drainage Service Facilities on cost sharing arrangements different from those provided in this Judgment.

8. Refunds to District for Net Overpayments and Deposits.

The parties agree that, as a result of overpayments and underpayments by the District to the United States for water service since June 30, 1978, and deposits by the District to the Existing Trust Fund since January 1, 1982, the District is entitled to the money referred to in Paragraphs 8.1 and 8.2 below.

8.1. The entire amount in the Existing Trust Fund at the end of the month in which this Judgment is entered, including principal and interest, (which was a total of $37,960,287.75 as of February 28, 1986) shall be released to the District from said trust at the end of said month. As soon thereafter as possible, the money shall be used, first, for payment of court costs and attorneys' fees and expenses as provided in Paragraph 19 below and, second, to refund water users in the District having net credits as provided in Paragraph 9 below.

8.2. As of the end of the month in which this Judgment is entered, the District shall be entitled to a refund from the United States of a sum which was $6,900,081.00 as of February 28, 1986, as shown in Exhibit I attached hereto, which amount includes Statutory Interest. Said refund amount shall be adjusted to reflect overpayments and underpayments and Statutory Interest thereon from March 1, 1986, to the end of the month in which this Judgment is entered.

8.3. The adjusted refund referred to in Paragraph 8.2 above shall be applied as a credit against payments due from the District to the United States as provided in Paragraph 13.2 below.

8.4. Notwithstanding the credit provided for in Paragraph 8.3 above, (a) in the first year after this Judgment is entered, the District shall levy, and apportion within the District as authorized by law, and the landowners in the District shall pay to the District assessments in the total amount of said credit and (b) the District shall deposit the assessments so paid into a special Overpayment Refund Account of the District, which the District shall invest to earn the highest possible rate of interest in prudent, legally authorized investments pursuant to California Government Code Sections 53600-53683. Said interest shall become a part of the Overpayment Refund Account. The money in the Overpayment Refund Account shall be refunded or used as provided in Paragraphs 9.6.2 and 9.6.3 below.

9. Overpayment Credits and Underpayment Debits to Water Users.

9.1. The District shall establish a bookkeeping account for every District water user who purchased water from the District for use during the Bookkeeping Account Period.

9.2. Each water user's bookkeeping account shall show, as a credit, the amount of overpayments to the District and, as a debit, the amount of underpayments to the District for the various categories of water purchased by such water user for use during the Bookkeeping Account Period and the amount of Statutory Interest properly attributable thereto as determined by the District. Exhibit J attached hereto shows the totals of all overpayments and underpayments to the District for the Bookkeeping Account Period for the various categories of water as of February 28, 1986. Said totals shall be adjusted to reflect overpayments and underpayments from

March 1, 1986, through the end of the month in which this Judgment is entered. In allocating these adjusted totals and Statutory Interest thereon among the various water user's bookkeeping accounts, the District shall be guided by the principles set forth in Paragraphs 9.2.1 through 9.2.5 below.

9.2.1. All the water purchased by agricultural water users in Areas IA and 1B has been "San Luis agricultural" ("SL AG") water. The remaining SL AG category water not purchased by agricultural water users in Areas lA and 1B for use in each year has been purchased by agricultural water users in Areas 2A and 2B in proportion to the total amount of water purchased by each such water user for use in such year. However, as an exception to the first sentence of Paragraph 9.2.1 above, SL AG water is deemed to have become "San Luis Agricultural operation and maintenance" ("SL AG O&M") water to the extent the water was delivered for use to lands subject to the operation and maintenance water rate pursuant to Section 208 of the 1982 Act.

9.2.2. Agricultural water users in Areas 2A and 2B have purchased all the "Mendota Pool agricultural water" ("MP AG") each year in proportion to the total amount of water purchased by each such water user for use in such year.

9.2.3. The remainder of the total amount of water which has been purchased by each agricultural water user in Area 2A and 2B for use in each year has been "San Luis agricultural excess" ("SL AG EX") water.

9.2.4. All the water which has been purchased by agricultural water users in areas annexed to the District after June 29, 1965, has been SL AG EX water.

9.2.5. "Municipal and industrial water users in the District have purchased and used only "San Luis Municipal and Industrial" ("SL MI") water.

9.3. Each water user's bookkeeping account shall also show, as a debit, such water user's share of the total payment by the District of court costs and attorneys' fees and expenses as provided for in Paragraph 19 below. Each water user's share shall be the same proportion of said total payment as the total amount of water purchased by such water user from the District for use during the Bookkeeping Account Period is of the total amount of water purchased by all water users from the District for use during the Bookkeeping Account Period.

9.4. Each water user's bookkeeping account shall also show such water user's net credit or net debit, taking into account the credits and debits described in Paragraphs 9.2 and 9.3 above.

9.5. Each water user having a net debit in such water user's bookkeeping account shall be obligated to pay the District the amount thereof, together with Statutory Interest on the unpaid balance beginning the first day of the month after this Judgment is entered. The District shall take such action as it deems appropriate to collect the amount owed, including but not 'limited to adding such amount to such water user's water purchase payment obligations. The amount collected shall be deposited into and become part of the Overpayment Refund Account established by Paragraph 8.4 above.

9.6. The net credits in the water users' bookkeeping accounts shall be refunded as provided in Paragraphs 9.6.1 through 9.6.3 below.

9.6.1. The total amount of money released to the District from the Existing Trust Fund under Paragraph 8.1 above, less the amount paid for court costs and attorneys' fees and expenses as provided in Paragraph 19 below, shall be apportioned among and paid to all the water users having net credits in proportion to their net credits.

9.6.2. When the required money has been deposited in the Overpayment Refund Account under Paragraphs 8.4 and 9.5 above, the money therein shall be apportioned among and paid by the District as soon as practicable to all the water users having net credits in proportion to their net credits. Upon such payments being completed, said net credits shall be deemed fully refunded.

9.6.3. If the District is unable to locate a particular water user to refund the net credit to which such water user is entitled, the amount due such water user shall be used as determined by the District.

10. Service Area—Area 1B and 2B Rights.

10.1. Area 1B, in addition to Area 1A, is within the authorized service area of the Central Valley Project, including the San Luis Unit and Delta Mendota Canal, and is entitled to the same water supply and the same rights pertaining thereto as Area 1A.

10.2. Area 2B, in addition to Area 2A, is within the authorized service area of the Central Valley Project, including the San Luis Unit and Delta Mendota Canal, and is entitled to the same water supply and the same rights pertaining thereto as Area 2A.

10.3. Areas adjacent to Area 1B or Area 2B which in the; past have been annexed to the District with the consent of the United States are within the authorized service area of the Central Valley Project, including the San Luis Unit and Delta Mendota Canal.

11. Improvement Districts and Future Contracts.

11.1. The District shall initiate proceedings to form an improvement district encompassing all of Area 2A and Area 2B plus lands annexed to the District after June 29, 1965, for the purpose, among other things, of contracting with the United States for water service to serve solely the lands

therein. The District also may initiate proceedings to form one or more improvement districts encompassing all or certain portions of the same territory described in the preceding sentence for the purpose, among other things, of contracting with the United States for construction of water distribution facilities or collector drainage facilities to serve the lands therein.

11.2. The District shall, with Area I concurrence as provided in Paragraph 22.5 below, initiate proceedings in the future to form one or more improvement districts encompassing all or certain portions of Area lA and Area 1B for the purpose, among other things, of contracting with the United States, if and when appropriate, for completion of a collector drainage and water distribution system to serve the lands therein.

11.3. For any improvement district of the District to be eligible to contract with the United States for any purpose referred to in Paragraphs 11.1 and 11.2 above, it must qualify as an "organization" under Section 2(g) of the 1939 Act, and to be eligible to contract with the United States for the purpose of construction of collector drainage or water distribution facilities, it must be of such size and configuration as the Secretary of the Interior reasonably determines constitutes a logical area for such purpose. Upon any improvement district of the District entering into a contract with the United States for any purpose referred to in Paragraph 11.1 and 11.2 above, the contracting improvement district, but not the portion of the District outside such contracting improvement district, shall, if required by Section 203 (a) of the 1982 Act, become subject to the discretionary provisions of the 1982 Act by virtue of entering into said contract.

11.4. Neither the District nor any improvement district of the District shall enter into any future contract with the United States as described in Section 203(a) of the 1982 Act (a) without approval of the voters of the District or improvement district thereof, as appropriate, by two-thirds of the votes cast, and (b) until the latest date reasonably necessary, which, in the case of a future contract with the United States for completion of a collector drainage system to serve lands in Area IA and Area 1B, shall be the latest date which would enable completion of such collector drainage system by the time Drainage Service Facilities are completed and ready to receive and dispose of drainage therefrom.

11.5. The entry into and performance of any water service contract between the United States and any improvement district of the District pursuant to this Judgment shall create no rights, preferences or priorities as to water service between lands in the Original Westlands District and lands in the Former Westplains District after the term of this Judgment.

12. Cooperation Between District and Federal Parties.

12.1.1. Reference is made to the recital of facts in Paragraph 5.1 above. Subject to all the requirements of this Judgment and the law, including the applicable provisions of the National Environmental Policy Act ("NEPA"), Federal reclamation law and the Administrative Procedure Act, including their requirements respecting agency decision-making, the Federal Parties shall, with the cooperation of the District, enter into a long-term contract under Section 9(e) of the 1939 Act on behalf of the United States with an improvement district of the District encompassing all of the territory described in Paragraph 11.1 above, for the firm annual delivery of the amounts of Central Valley Project water referred to in Paragraph 5 above at the rates specified in that paragraph for a term expiring no sooner than December 31, 2007; provided, that in the event of an alleged breach of the provisions of this Paragraph 12.1.1 by the Federal Parties, the remedies available to a party shall be limited to: (1) the revival of any claim otherwise preserved pursuant to Paragraph 14.1.1, below, or (2) the bringing of a new action pursuant-to the Administrative Procedure Act, 5 U.S.C. § 701 et seq.

12.1.2. Subject to all requirements of this Judgment and the law, including the applicable provisions of NEPA, Federal reclamation law and the Administrative Procedure Act, including their requirements respecting agency decision-making, and subject to any necessary congressional authorization, the availability of funds appropriated by the Congress, and the execution of an appropriate repayment or loan contract between the United States and the District or an improvement district of the District that is approved by the Secretary pursuant to Paragraph 11.3 above, the Federal Parties will make a good faith effort to construct water distribution and collector drainage facilities needed in the District in addition to those constructed under the 1965 Contract; provided, that the sole remedy available to a party for an alleged breach of this Paragraph 12.1.2 by the Federal Parties shall be limited to pursuing a claim as described in Paragraph 14.1.8 below.

12.2. With reference to the portion of the District encompassing Areas 2A and 2B plus lands annexed to the District after June 29, 1965, the provisions of Paragraph 12.3 below are included in this Judgment in light of the facts recited in Paragraphs 12.2.1 through 12.2.6 below, as agreed to by the parties.

12.2.1. In addition to any water obtained by contract pursuant to Paragraph 12.1.1 above, any water available to such portion of the District under Paragraphs 5 above and 17.3 below, and the limited available groundwater supply, such portion of the District needs an additional annual supplemental water supply of 100,000 acre feet or more in order to provide it a total water supply adequate to sustain the existing agricultural development.

12.2.2. That need for an additional annual supplemental water supply to Areas 2A and 2B has been acknowledged by

the Federal Parties and the District since before the merger of Former Westplains District and Original Westlands District in 1965.

12.2.3. Such portion of the District currently has no water supplies available to it other than those described in Paragraph 12.2.1 above.

12.2.4. Such portion of the District is within the authorized service area of the Central Valley Project.

12.2.5. Additional water service can be provided to such portion of the District from the Central Valley Project through the existing main conveyance facilities of the Central Valley Project, to the extent such service does not interfere with the furnishing of Central Valley Project water to contract entities in the San Felipe Division, Central Valley Project.

12.2.6. Such portion of the District has the financial ability and is willing to pay the United States the applicable rates for an additional annual supplemental water supply from the Central Valley Project.

12.3. At such time as additional Central Valley Project water becomes available for long-term contracting, the Federal Parties, subject to all requirements of law and the then-prevailing Bureau of Reclamation water marketing policy, shall make a good faith effort to provide for delivery of an additional annual supplemental water supply to an improvement district encompassing such portion of the District or, if no such improvement district then shall exist, to the District, under mutually agreeable contract terms and conditions; provided, that nothing in this Paragraph 12.3 shall be deemed to confer upon either such improvement district or the District any priority right to such additional water vis a vis any other potential or competing users of available Central Valley Project water; provided further, that in the

event of an alleged breach of the provisions of this Paragraph 12.3 by the Federal of a new action pursuant to the provisions of the Administrative Procedure Act, 5 U.S.C. § 701 *et seq*.

13. Repayment of Funds Expended Under P.L. 95-46

13.1. The provisions of Paragraphs 13.2 and 13.3 below are included in light of the facts recited in Paragraphs 13.1.1 through 13.1.5 below, as agreed to by the parties.

13.1.1. Public Law 95-46, enacted June 15, 1977; authorized to be appropriated and to be committed for expenditure by the Secretary of the Interior the sum of $31,050,000 (hereinafter "P.L. 95-46 funds") for continuation of construction of distribution systems and drains on the San Luis Unit, Central Valley Project. But said statute prohibited the Secretary from expending any of those funds prior to obtaining a pledge of the Board of Directors of the District indicating its intent to repay costs associated with the construction authorized by said statute.

13.1.2. On May 13, 1977, in anticipation of the enactment of Public Law 95-46, the Board of Directors of the District adopted Resolution No. 549-77 wherein it pledged to take all steps necessary to insure repayment by the District of expenditures of funds by the United States on behalf of the District pursuant to said statute. On June 23, 1977, the District mailed a certified copy of that Resolution to the Federal Parties. That copy was received by the Federal Parties on June 27, 1977, and was immediately accepted by the Federal Parties as the pledge of the District Board of Directors described in said statute.

13.1.3. Thereafter, in 1978, the Congress commenced the appropriation and the Federal Parties commenced the expenditure within the District of P.L. 95-46 funds, and the District accepted the benefits thereof.

13.1.4. By virtue of the foregoing, the District became and still remains contractually obligated at law to repay to the United States all P.L. 95-46 funds, expended on the District's behalf, on such terms as are required by Section 9(d) of the 1939 Act and were, at that time, customarily used in repayment contracts between the United States and water districts under said section.

13.1.5. To date, the Federal Parties have expended $22,027,371 of P.L. 95-46 funds to construct distribution and collector drainage facilities in the District and intend to expend the remaining $9,022,629 of said funds to construct additional distribution and collector drainage facilities within the District to the extent such funds are now or hereafter become available.

13.1.6. Exhibit K attached hereto and incorporated herein by reference includes the terms customarily used in repayment contracts between the United States and water districts under Section 9(d) of the 1939 Act at the time the contractual obligations referred to in Paragraph 13.1.4 arose.

13.2. The terms of the contractual obligations between the District and the United States with respect to the expenditure and repayment of P.L. 95-46 funds within the District are set forth in Exhibit K.

13.3. As set forth in Exhibit K:

(a) The adjusted refund to which the District is entitled under Paragraph 8.2 above is applied as a credit against the expenditure of P.L. 95-46 funds to date of $22,027,371, and the District's contractual obligation is thereby repaid to the extent of that credit.

(b) The remaining amount of P.L. 95-46 funds expended to date shall be repaid by the District in 28 equal semi-annual installments on January 1 and July 1 each year beginning July 1 of the year after this Judgment is entered.

(c) Upon completion of expenditure by the United States of the presently unexpended remainder of P.L. 95-46 funds, said remainder shall be repaid by the District to the United States in 40 equal semi-annual installments on January 1 and July 1 each year beginning July 1 of the year following such completion of expenditure.

14. Claims Preserved and Claims not Affected by Judgment.

14.1. Notwithstanding this Judgment and the parties' voluntary dismissal of all claims for relief pleaded in these present actions, the claims described in Paragraphs 14.1.1 and 14.1.2 below, and the right to judicial relief with respect thereto in other actions, are preserved, and the claims described 1 in Paragraph 14.1.3 through 14.1.8 below are not affected by this Judgment.

14.1.1. Any claim of (a) a long-term right to the water service provided for in Paragraph 5 above at an agricultural water service rate of $7.50 per acre foot, and (b) if such a right is held not to exist, a right to recover the costs of operation and maintenance of the Pleasant Valley (Coalinga) Canal and Pumping Plant incurred by the District; provided, that such claims may be asserted only if the Federal Parties do not offer the District or an improvement district of the District encompassing Areas 2A and 2B a contract as described in Paragraph 12.1.1 above within a reasonable time prior to the expiration of the term of provisional water service provided for in Paragraph 5.2.4 above.

14.1.2. Any claim against the United States of the right to drainage service or Drainage Service Facilities, including but not limited to any claim by the District of the right to recover District costs of providing Drainage Service Facilities; provided, that the right to drainage service or Drainage Service Facilities which may be claimed against the United States

during the term of this Judgment shall be limited to the removal and disposal of not to exceed 100,000 acre feet per year of subsurface agricultural drainage water from the District; provided further, that such claim may be asserted only upon the occurrence of one of the conditions specified in Para-graphs 7.1.8.1 through 7.1.8.8 above.

14.1.3. Any claim that the second sentence of Section 203(b) of the 1962 Act is invalid or inapplicable to lands within the District.

14.1.4. Any claim challenging the authority of the United States or the Federal Parties to sell excess lands under Federal reclamation law, including but not limited to the right to assert, subject to Paragraph 7.4 above, that provision for the Drain as set forth in the 1960 Act is a condition of the exercise of that authority.

14.1.5. Any claim that a contract referred to in Paragraph 11.2 above is not a contract as described in Section 203(a) of the 1982 Act.

14.1.6. Any claim of any landowner or water user against the United States arising out of or relating to Exhibit H which (a) sounds in tort, or (b) has been asserted in any other action pending on the date of execution of the Stipulation for Compromise Settlement from which this Judgment arose, or (c) seeks declaratory relief about the interpretation of the terms of Exhibit H.

14.1.7. Any claim of any landowner or water user against the District arising out of or relating to Exhibit H, drainage service, or Drainage Service Facilities.

14.1.8. Any claim of a party against the United States of a legal right to have additional water distribution or collector drainage facilities constructed within the District in addition to those constructed pursuant to the 1965 Contract; provided, that such claim may be asserted only in the event that the

Federal Parties fail to perform in accordance with the terms of Paragraph 12.1.2 above, and not otherwise.

14.2. The claims referred to in Paragraphs 14.1.1 through 14.1.8 above shall be subject to all available defenses, except that the running of time respecting the defense of statute of limitations and laches to the claims referred to in Paragraph 14.1.1 and 14.1.2 above shall be tolled between the date this Judgment is entered and the first date when such claim may be asserted.

15. Past Contracts, Water Allocation and Pricing.

All parties have voluntarily dismissed with prejudice all claims for relief pleaded in these actions arising out of any Interim Contract, Exhibit H, any Internal Allocation Rule or any Internal Pricing Rule, except that the District and the United States retain any claim for relief arising out of Exhibit H. No party shall recover any damages or obtain any other judicial relief in any action against any other party based on such past actions, except as provided in Paragraphs 6 and 9 above and Exhibit H. Notwithstanding the foregoing, any landowner or water user may assert in any other action any claim for relief referred to in Paragraphs 14.1.6 and 14.1.7 above and seek any remedy provided by law with respect thereto.

16. Future Contracts—Rights Under Merger Law.

Subject to the provisions of this Judgment and during its term, neither the District nor any improvement district of the District shall enter into any future water service, repayment or other contract, or perform under such contract, so as to impair the rights to which the 1A and 1B Parties are entitled pursuant to the Merger Law.

17. Future Water Allocation and Pricing.

17.1. Subject to the provisions of this Judgment and during its term, neither the District nor any improvement district of the District shall adopt any future Internal Allocation Rule or Internal Pricing Rule, or enforce any such rule, so as to impair the rights to which the IA Parties and 1B Parties are entitled pursuant to the Merger Law.

17.2. The IA Parties and 1B Parties shall have the first and prior right to timely apply for and purchase from the District the entire quantity of water to which the District is entitled under the 1963 Contract. Except as provided in the preceding sentence and in Paragraphs 17.3 and 17.5 below, by virtue of the Merger Law the District shall adopt no Internal Allocation Rule in the future which allocates to Area IA and Area 1B less than such quantity of water.

17.3. Any water delivered to the District under the 1963 Contract not purchased by water users in Area 1A and Area 1B shall be allocated ratably among water users in Area 2A and Area 2B which timely apply for and purchase such water from the District.

17.4. Any water delivered to the District by the United States for use within the District in addition to water delivered under the 1963 Contract, including but not limited to water delivered under Paragraph 5 above and under the water delivery contracts referred to in Paragraphs 12.1.1 and 12.3 above, shall be allocated ratably among water users in Area 2A and Area 2B which timely apply for and purchase such water from the District.

17.5. In years of water shortage when water deliveries to Central Valley Project water contractors are reduced by the Federal Parties under their respective water service contracts, deliveries to and within the District of water purchased under Article 3 of the 1963 Contract to which the water users in Area IA and Area 1B have prior rights shall be proportionally

reduced along with deliveries to and within the District of the additional water from the Central Valley Project to which lands in the District are entitled.

17.6. Except as provided in Paragraph 7.3.1 above and Paragraph 18 below, the District shall not charge any water user more for water service or Drainage Service than the charges required to be paid to the United States for such service, plus any appropriate District charges to cover District costs reasonably necessary in making such service available within the District and in operating the District, including but not limited to compliance with this Judgment. Except as required by the 1982 Act and as provided in Paragraph 18 below, the District shall adopt no Internal Pricing Rule in the future which imposes a water service charge for the water allocated to Area 1A and Area 1B which is greater than the price of water which the District is obligated to pay under the 1963 Contract, plus the appropriate District charges referred to in the preceding sentence.

18. District Financing and Expenditures for Drainage Purposes.

18.1. Notwithstanding anything to the contrary in Paragraphs 7.6 and 17.6 above or elsewhere in this Judgment, the District may raise money to be expended for any drainage purpose either by assessments on land or by charges for service or by a combination of both assessments and charges, as authorized by law, subject, however, to the conditions and limitations set forth in Paragraphs 18.2 through 18.5 below.

18.2. In levying any such assessments, the District shall apportion them as authorized by law, including but not limited to Water Code Sections 36577 and 36578.

18.3. In fixing any such charges, the District shall, if appropriate, equitably vary the amounts in different localities of the

District to correspond to the cost and value of the service involved as authorized by law, including but not limited to Water Code Section 35470.

18.4. Before deciding on a major expenditure for any drainage purpose, the District shall give all water users (and, if appropriate, all landowners) reasonable notice of, and opportunity to submit views to the District regarding, the proposed drainage purpose, the estimated amount of the expenditure, the proposed method of raising money to finance it, who will ultimately bear the cost, and any other relevant information. If, by reason of circumstances beyond the control of the District, there is insufficient time to give such notice and opportunity to all water users, the District shall give such notice and opportunity to the Area I and Area II representatives.

18.5. Area I and Area II concurrence, as provided in Paragraph 22.5 below, shall be required before the District may raise money or make appropriate expenditures for any drainage purpose, except that such concurrence is not required to raise money or make expenditures reasonably necessary (a) to comply with obligations arising from statutes and court and administrative judgments, orders and regulations, and from existing con-tracts, and (b) to make drainage service provided by the United States available within the District.

19. Payment of Court Costs and Attorneys' Fees and Expenses.

Except as set forth herein, each party shall bear his or its own court costs and attorneys' fees and expenses. The District shall pay the class representatives their court costs and reasonable attorneys' fees and expenses as approved by the District for the representation of their respective classes. The District shall also pay West Haven Farming Company its reasonable attorneys' fees and expenses as approved by the

District for its assistance in achieving settlement of these actions, and shall also pay Kings County Development Company Shareholders Liquidating Trust, successor in interest to Kings County Development Company, Stephens Investments Inc. et al, Chevron U.S.A. and Southern Pacific Land Company, et al their respective 1 reasonable attorneys' fees and expenses up to $25,000 each as approved by the District for the assistance each has provided in achieving settlement of these actions. Said payments shall be made by the District from the money released from the Existing Trust Fund under Paragraph 8.1 above before said money is used to refund water users for their net credits.

20. Fifty Cents Per Acre Foot Drainage Service Charges.

No party or water user shall be entitled to reimbursement of any $0.50 per acre foot drainage service charge paid in the past.

21. Pleasant Valley (Coalinga) Canal and Pumping Plant.

Neither the District nor any water user or landowner therein has any right against the United States or the Federal Parties to any refund of the costs of operation and maintenance of the Pleasant Valley (Coalinga) Canal and Pumping Plant which the District has assumed in the past. The District shall retain the responsibility for such operation and maintenance until the end of 2007, as long as the Federal Parties continue to deliver to the District the quantities of Central Valley Project water specified in Paragraph 5 above at the rates specified therein. The IA Parties and 1B Parties shall have no relief against the District or against the 2A Parties and the 2B Parties with respect to the manner in which the District has heretofore charged its water users for said costs under any Internal Pricing Rule. The District shall adopt no Internal Pricing Rule in the future which passes on the District's share of such charges on any other than a uniform basis throughout the District.

22. Termination of Classes and Authorization of Area Representatives.

22.1. The Area 1A, 1B, 2A and 2B Classes are hereby terminated and the representatives heretofore certified as representatives thereof are hereby discharged. In lieu thereof, Area representatives are hereby authorized to represent the two major areas of the District, Area I and Area II, for purposes of enforcement of this Judgment under Paragraph 3 and Area concurrence under Paragraphs 4.3, 7.1.1, 7.1.9, 7.6, 11.2, and 18 above.

22.2. The representatives of Area I shall initially be Boston Ranch Company, Edwin O'Neill, Frank Orff, Y. Stephen Pilibos and Fabry Farms. The representatives of Area II shall initially be Vista Verde Farms, Inc., Price Giffen & Associates, Jim Lowe Inc., Woolf Farming Company of California, Inc., and Perez Ranches Inc.

22.3. Any representative of either such Area shall automatically lose status as such and shall no longer have any powers or duties as a representative of such Area hereunder upon the happening of either (a) the cessation of such representative's juridical existence, including the death or adjudication of incompetence of a natural person, or the dissolution of a corporation, or (b) the cessation of such representative's ownership and operation of land within the Area of which he is a representative. Upon the occurrence of such vacancy, the remaining representatives of the affected Area owning or operating at least a majority of the assessed value of all the lands within such Area which are owned or operated by all the remaining representatives of such Area shall select a successor representative willing to so serve. The name of the successor representative shall be certified to the District by the representatives who have selected the successor. The District shall maintain an up-to-date list of the names and addresses of all Area representatives and the assessed value of the lands owned or operated by each.

22.4. The Court retains jurisdiction to remove or replace one or more of the representatives of an Area for good cause on motion of a landowner or water user within such Area. Notice of such motion shall be served upon all the representatives of such Area and upon the District.

22.5. Concurrence of an Area with District action, as required in Paragraphs 4.3, 7.1.1, 7.1.9, 7.6, 11.2 and 18 above, shall be deemed to have been obtained as follows:

The District shall give every Area representative of each Area for which concurrence is required for a particular action written notice of such action by certified mail. If, within 30 days after such notice has been mailed, the District has not received written objection to such action from representatives owning or operating at least a majority of the assessed value of the land owned or operated within such Area by all the representatives thereof, concurrence of such Area shall be deemed to have been obtained. If, however, within said 30 days the District has received such written objection, concurrence shall be deemed not to have been obtained, except as follows with regard to the concurrence required under Paragraphs 7.1.1, 7.1.9, 7.6, 11.2 and 18 above but not under Paragraph 4.3 above: The District may call an advisory election within such Area pursuant to the California Water District Act and the California Elections Code on the question of concurrence. If a majority of the votes cast in such election are in favor of concurrence, concurrence shall be deemed to have been obtained.

23. Judgment and Stipulation for Compromise Settlement Not a Contract.

Neither this Judgment nor the Stipulation for Compromise Settlement is a contract or an amendment to a contract with the United States as described in Section 203(a) of the 1982 Act.

24. No New United States Drainage Service Obligation.

Nothing in this Judgment or the Stipulation for Compromise Settlement shall be deemed to create any obligation of the United States to provide any drainage service to the District or to construct Drainage Service Facilities for the District, and any claim that the United States has a preexisting obligation with respect to drainage service or Drainage Service Facilities may be brought by the District in accord with Paragraph 14.1.2 and not otherwise.

25. Application of Certain Paragraphs.

The provisions of Paragraphs 11.4, 16, 17 and 22 are intended to, and shall, apply only among the District, the 1A Parties, the 1B Parties, the 2A Parties and the 2B Parties and are not intended to benefit the United States.

Dated: _____.

_____
United States District Judge

[Exhibits and Proof of Service Omitted]

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CV-F-93-5327 OWW SSH

WESTLANDS WATER DISTRICT, SAN BENITO COUNTY WATER DISTRICT, SAN LUIS WATER DISTRICT, AND PANOCHE WATER DISTRICT,

Plaintiffs,

v.

UNITED STATES OF AMERICA, DEPARTMENT OF INTERIOR, BUREAU OF RECLAMATION, UNITED STATES OF AMERICA, DEPARTMENT OF COMMERCE, NATIONAL MARINE FISHERIES SERVICE, UNITED STATES OF AMERICA, DEPARTMENT OF INTERIOR FISH AND WILDLIFE SERVICE, RONALD H. BROWN, SECRETARY OF COMMERCE, BRUCE BABBIT, SECRETARY OF THE INTERIOR,

Defendants.

MEMORANDUM OPINION AND ORDER
RE: MOTION TO DISMISS COMPLAINT

I. Introduction

Plaintiffs Westlands Water District, San Benito County Water District, Panoche Water District and San Luis Water District ("Districts") move to dismiss their Seconded Amended Complaint in its entirety without prejudice, pursuant to Fed. R. Civ. P. 41(a)(2). All parties except the Area I Intervenors ("Area I") have previously stipulated to the dismissal of Plaintiffs' remaining claims. Area I Intervenors refused to agree to the stipulation, and now oppose the motion to dismiss. Federal Defendants support the motion for dismissal and have made a joint response to the Area I opposition.

II. Background

The Districts filed an action for injunctive relief and damages on May 17, 1993 challenging several actions taken by the Federal Defendants under the Central Valley Project Improvement Act ("CVPIA"), Title XXIV of Pub. L. No. 102-575, 106 Stat. 4606 and the Endangered Species Act ("ESA") 16 U.S.C. §§ 1531-1544. The Districts filed a Second Amended Complaint in March 1994 with eight causes of action "challenging the reduction in deliveries of water and impending assessments by the Federal Defendants." The Districts also alleged violations of the National Environmental Protection Act ("NEPA"), 42 U.S.C. §§ 4332 et seq. The Federal Defendants filed an answer to the Second Amended Complaint.

Several parties joined the action as Intervenors. The Environmental Intervenors and the Exchange Contractor Intervenors joined in September 1993. Area I Intervenors joined in October 1993 and Grassland Intervenors joined in June of 1994.

Subsequent to several negotiations and agreements, among them the December 15, 1994 Principles for Agreement on Bay-Delta Standards Between the State of California and the Federal Government, all of the parties to the action stipulated to the dismissal of the NEPA portion of the plaintiffs' second claim for relief, as well as to the third through seventh claims for relief in the Second Amended Complaint. *See* Omnibus Stipulation re Dismissal of ESA Claims and Complaint-in Intervention and Order Thereon (Filed May 23, 1995).

On June 30, 1995 plaintiffs notified the court that they intended to dismiss this action. Plaintiffs circulated a letter of stipulation to counsel for defendants and intervenors which provided for the dismissal without prejudice of the remaining claims. With the exception of Area I Intervenors, counsel for all defendants and the remaining intervenors agreed to the

stipulation. In light of the Area I Intervenors' objection to the stipulation, the Districts have filed this motion to dismiss without prejudice.

III. Standard

Rule 41(a)(2) allows a plaintiff, with the approval of the court, to dismiss an action without prejudice at any time:

> Except as provided in paragraph (1) of this rule, an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper . . .

Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal under Rule 41(a) (2) is addressed to the district court's sound discretion. *Stevedoring Servs. of Am. v. Armilla Int'l*, 889 F.2d 919, 921 (9th Cir. 1989).

A motion for voluntary dismissal should be granted unless the defendant can show that it will suffer some plain legal prejudice as a result. *Waller v. Financial Corp. of Am.*, 828 F.2d 579, 583 (9th Cir. 1987); *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982). Plain legal prejudice may be shown where actual legal rights are threatened or where monetary or other burdens appear to be extreme or unreasonable. *Watson v. Clark*, 716 F. Supp. 1354, 1356 (D. Nev. 1989), *aff'd*, 909 F.2d 1490 (9th Cir. 1990). Factors to consider in determining legal prejudice are:

(1) The defendant's effort and expense involved in preparing for trial;

(2) Excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action;

(3) Insufficient explanation of the need to take a dismissal; and

(4) The fact that summary judgment has been filed by the defendant.

Pauluccci v. City of Duluth, 826 F.2d 780, 783 (8th Cir. 1987); *see also, Grover v. Eli Lilly & Co.*, 33 F.3d 716, 718 (6th Cir. 1994); *United States v. Outboard Marine Corp.*, 789 F.2d 497, 502 (7th Cir. 1986). The prejudice resulting from uncertainty over title to land is also a valid consideration. *Ferguson v. Eakle*, 492 F.2d 26, 29 (3d Cir. 1974). Plain legal prejudice does not occur where the defendant merely faces the threat of a second lawsuit or a tactical disadvantage. *Hamilton*, 679 F.2d at 145.

The suit may be dismissed with or without prejudice, and the dismissal may be conditioned on terms that are proper or necessary to avoid prejudice to the defendant. See *Koch v. Hankins*, 8 F.3d 650, 652 (9th Cir. 1993).

IV. Discussion

Plaintiffs (Districts) base their motion for dismissal without prejudice on Fed. R. Civ. P. 41(a)(2). The Districts state that no party will suffer legal prejudice resulting from a dismissal. They note that all of the defendants and intervenors except for those of Area I, have agreed to stipulate to the dismissal of plaintiffs' remaining claims. Citing the Order after Scheduling Conference, filed May 19, 1995 at 3, the Districts argue that Area I Intervenors may pursue any claims by severing their existing complaint in intervention or by filing a new lawsuit.

In their response, Area I Intervenors do not take a position as to the dismissal of the claims brought by the plaintiffs San Benito County Water District, San Luis Water District, and Panoche Water District. However, to the extent the motion is brought on behalf of the Westlands Water District (Westlands), Area I Intervenors have three arguments: 1) The court should not dismiss the action. However if it does, it should name the Area I Intervenors as plaintiffs succeeding to all

Westlands claims for relief; 2) The court should not dismiss claims one and eight of the Second Amended complaint, but if it does, such dismissal should be conditional upon Westlands assisting Area I Intervenors in pursuing the claims; and 3) Dismissal of Westlands' claims two through seven should be made only on condition that they do not prejudice Area I water users' rights.

A. Objection to Dismissal and Request for Plaintiff Designation

Area I Intervenors argue that the court should not dismiss the case because it would result in uncertainty as to water rights. Area I Intervenors state that in the past the court has denied a plaintiff's motion to dismiss because uncertainty over water rights would prejudice the defendants. *Citing Westlands Water District v. Patterson*, 1995 WL 548344 (E.D.Cal. August 9, 1995), at 4.

The Area I Intervenors read the court's *Westlands* holding too narrowly. The court's refusal to dismiss in *Westlands* was based on a variety of factors, among them: prejudice to defendants, and that the case was ripe for review. Id. The instant case is distinguishable. Defendants do not argue that they will suffer any prejudice; indeed, they have stipulated to the dismissal. Furthermore, the case is not ripe for review. Plaintiffs note that there has been no discovery, designation of witnesses, or motions for summary judgment relating to the Districts' remaining claims.

Area I Intervenors argue that dismissal of the case would lead to continued confusion of critical statutory issues. They maintain that continuing this case with the current parties will provide for efficient judicial resolution of the water allocation problem. *citing Barcellos and Wolfsen v. Westlands Water District*, 849 F. Supp. 717, 725 (E.D. Cal. 1993) "the proper forum to raise Movants' remaining issues is a separate suit in which all the necessary parties are named. . ." and *O'Neill v.*

U.S., 50 F.3d 677, 689 (9th Cir. 1995) "[A] decision will enable a comprehensive judicial resolution of the allocation problem which affects many parties other than Area I."

Area I's argument ignores the fact that all the parties have stipulated to the dismissal of the complaint. The Federal Defendants argue that the negotiated Delta Accord has provided for the satisfactory resolution of the water issues. The court cannot compel parties to bring a suit. Indeed, public policy and judicial economy dictate encouraging settlement of complaints. Any uncertainties, to the extent that they remain, may be addressed by Area I Intervenors in proceeding with their present claims or by amending their complaint.

As a final point to their first argument, Area I parties contend that if the court grants the motion to dismiss the complaint, it should do so only upon the condition of redesignating Area I intervenors as plaintiffs succeeding to Westlands' claims.

Area I Intervenors misunderstand the nature of Fed. R. Civ. P. 41(a)(2). A motion for voluntary dismissal should be granted unless a defendant can show that it will suffer some plain legal prejudice as a result. *Waller v. Financial Corp. of Am.*, 828 F.2d 579, 583 (9th Cir. 1987); *Hamilton v. Firestone Tire & Rubber Co.*, 679 F.2d 143, 145 (9th Cir. 1982). Not one of the defendants here maintains that it will suffer legal prejudice. Similarly, Area I, as plaintiffs-in-intervention, do not demonstrate plain legal prejudice will result from a dismissal of the action. Mere inconvenience does not constitute plain legal prejudice. *Hamilton v. Firestone*, 679 F.2d 143, 145 (9th Cir. 1982). The action is dismissed as to Westlands without prejudice.

A dismissal under 41(a)(2) is a dismissal of the "action" not just of certain claims. If Area I Intervenors wish to amend their complaint they may be designated as Plaintiffs.

By the May 19, 1995 order, Area I parties were directed to consult with the government and determine whether any remaining claims they wish to assert are best advanced by severing their existing complaint in intervention, or by filing of a new lawsuit." Order after Scheduling Conference, at 3. The court directed the Exchange Contractors to make the same determination. Since that time, the Exchange Contractors have filed an amended complaint. See First Amended Complaint in Intervention of San Joaquin River Exchange Contractors Water Authority, filed August 29, 1995. Area I Intervenors are likewise free to proceed with their existing claims or to file an amended complaint.

B. Specific Objection to the Dismissal of Claims One and Eight

Area I objects to the dismissal of Westlands' first and eighth claims. The first claim for relief generally alleges that Westlands has vested property rights in a continued water supply, the plan to reduce delivery in order to satisfy the CVPIA and ESA requirements deprives Westlands of such vested rights, and such reductions violate Westlands' due process rights. The eighth claim for relief alleges that the Bureau of Interior must obtain modification of the state water right permits to obtain water reallocation, that the Bureau reallocated such water without obtaining prior modification, and that doing so violated federal reclamation laws.

As stated above, a court should grant a plaintiff's motion to dismiss unless a defendant can show that it will suffer some plain legal prejudice. *Waller* 828 F.2d at 583; *Hamilton*, 679 F.2d at 145. Lacking a demonstration of actual legal prejudice to defendants, Westlands' motion to dismiss this action as to all claims must be granted.

In the event that the motion to dismiss claims one and eight is granted, Area I Intervenors request that the dismissal be conditioned upon Westlands' assisting Area I in its prose-

cution of the case by: 1) making all witnesses and experts available; 2) not taking any action that would compromise or prejudice any water users' rights to water; and 3) bearing the costs and reasonable fees of litigation.

Area I Intervenors assert only one case in support of their witness availability proposition. *duPont Glore Forqan, Inc. v. Arnold Bernhard & Co.*, 73 F.R.D. 313, 315 (S.D.N.Y. 1976). That case is distinguishable. *duPont* was a securities case where a motion was made under Fed. R. Civ. P. 21 to drop a corporate defendant from a suit. The court found that none of the other defendants was prejudiced by the dismissal of the corporate defendant from the suit. *Id.* As part of its granting the motion to drop the corporate defendant, the court required the corporate defendant to make material witnesses available at trial. The costs of making the witnesses available were borne by those who used the witnesses.

This case differs. No witnesses or circumstances which necessitate ordering Westlands' witnesses to cooperate with Area I are identified. Nor are any specific conditions of cooperation identified. The case is in an early stage, a long way from designating witnesses for trial. Finally, Area I parties do not agree to pay the witness costs, but wish to shift them to the Districts.

In support of their demand that the Districts bear the costs and reasonable fees of litigation, Area I Intervenors further argue that the water rights are a trust estate held by Westlands as trustee for Area I beneficiaries. If Westlands fails to protect the water rights and Area I parties protect it instead, the Area I parties may demand reimbursement for their costs.

The court has discretion as to the conditions it imposes on dismissal. "The terms and conditions that may be imposed under Rule 41(a)(2) are not limited to the payment of money." Wright and Miller Federal Practice and Procedure § 2366.

Despite the discretion to impose appropriate conditions on dismissal, the issue of Westlands alleged trust relationship to Area I parties cannot be determined on this motion. Area I seeks to hold Westlands responsible for open-ended, undetermined litigation expenses on the theory that Westlands may benefit from Area I's successful prosecution of this lawsuit. Area I's request for a decision they are entitled to be compensated by Westlands is premature. The substantial benefit theory on which the Area I Intervenors rely is "based on the premise that a successful plaintiff should be able to spread the costs of his litigation among those who benefited from the successful outcome." *Southerland v. Intern. Longshoremen's, Local 8*, 845 F.2d 796, 798 (9th Cir. 1987). Area I Intervenors have yet to be determined "successful;" "benefits" to Westlands have yet to be demonstrated. Area I is not at this time entitled to an advisory order for payment of its litigation costs by Westlands.

C. Conditional Dismissal of Claims Two through Seven

Area I Intervenors do not object to the dismissal of Westlands' claims two through seven so long as it does not prejudice their right to file a summary judgment motion on all claims and issues as to which Westlands filed such motions.

Plaintiffs and Federal Defendants note that a portion of the second claim, and all of third through the seventh claims have been previously dismissed by the court pursuant to the stipulation of all parties to the action. *See* Omnibus Stipulation re Dismissal of ESA Claims and Complaint-in-Intervention and Order Thereon filed May 23, 1995. Area I Plaintiffs signed such a stipulation agreeing to the dismissal of those claims.

The stipulation did contain language stating, "This dismissal shall not affect any rights of the Area I Intervenors." *Id.* at

2. Area I Intervenors may assert such rights through an amended complaint. The dismissal of Westlands' claims shall not be interpreted to the prejudice of any other party.

V. Conclusion

For the foregoing reasons, Westlands' motion to dismiss their complaint is GRANTED, without prejudice. Westlands' counsel shall prepare an order in conformity with this memorandum opinion and lodge it with the court within five (5) days following date of service of this opinion.

IT IS SO ORDERED.

DATED: November 1, 1995.

/s/ Oliver W. Wanger
OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CIV No. 93-5327-OWW/SSH

FRANCIS A. ORFF, BROOKS FARMS II BROOKS FARMS IV, BROOKS FARMS V, G.S. FARMS, FIVE-D WESTSIDEFARMS, INC., R & S FARMING, CARDELLA RANCH, GRAMIS FAMILY FARMS II, EDWIN R. O'NEILL, BRO PARTNERSHIP, BTO PARTNERSHIP,EJC PARTNERSHIP, ERO PARTNERSHIP, JEO PARTNERSHIP, SLO PARTNERSHIP, TBO PARTNERSHIP, C.S. STEFANOPOULOS TRUST, ELENA STEFANOPOULOS TRUST, ESTATE OF HELEN STAMOULES, D.D. STEFANOPOULOS TRUST, PAGONA STEFANOPOULOS, SUMNER PECK RANCH, INC., Y. STEPHEN PILIBOS, PILIBOS CHILDREN'S TRUST,
Plaintiffs,

vs.

UNITED STATES OF AMERICA *et al.*,
Defendants.

ORDER RE MEMORANDUM OPINION AND
ORDER RE DEFEFANTS' MOTION TO RECONSIDER

The Court, having considered Federal Defendants' motion to modify the June 5, 1998, Memorandum Decision, on the grounds that Area I Plaintiffs lack standing to sue the Federal Defendants under 43 U.S.C. 390uu which the Court construed as a motion for reconsideration, as well as the opposition filed by the Area I Plaintiffs and the Federal Defendants' reply brief, this Court finds as follows:

1. This suit, which was initially filed by Westlands Water District, San Benito County Water District, San Luis Water District and Panoche in May 1993, alleged

that various actions taken by the Federal Defendants violated the Central Valley Project Improvement Act (CVPIA), and the Endangered Species Act (ESA). Various groups, including the Area I Plaintiffs, intervened. After Westlands et al., moved to dismiss the case without prejudice in September 1995, the Area I Plaintiffs were given leave to file an amended complaint.

2. In their amended complaint, the Area I Plaintiffs alleged that this Court continued to have jurisdiction over their claims pursuant to 43 U.S.C. 390uu. In the June 5, 1998, Order, the Court held that the Area I Plaintiffs were 'intended third party beneficiaries with standing to litigate Westlands' contractual rights" and, further, that under 43 U.S.C. 390uu, the Area I Plaintiffs could seek money damages.

3. The Federal Defendants sought modification of the June 1998 Order on the grounds that 43 U.S.C. 390uu did not provide standing for the Area I Plaintiffs to sue and, second, that claims for money damages in excess of $10,000, the limit under the Little Tucker Act, could not be heard in this Court.

4. The decision in *Klamath Water Users v. Patterson*, 204 F.3d 1206 (9th Cir. 1999), addresses the issue of third-party beneficiaries in the context of a contract between the Bureau of Reclamation and a utility. Given the new Ninth Circuit case law, this Court concluded that reconsideration of .the third-party beneficiary issue was appropriate.

5. Examining Area I Plaintiffs' claims based on the 1963 contract between the United States and Westlands, this Court finds that the terms of the Contract reveal no intent to create in the water users within the District direct enforcement rights against the United States. This conclusion is supported by Paragraph 4.2 of the 1986

Barcellos Judgment which vested enforcement rights in the District. This Court therefore finds that the Area I Plaintiffs are neither contracting parties nor intended third party beneficiaries of the 1963 Contract between Westlands and the United States.

6. With regard to Area I Plaintiffs' assertion that they have standing to sue under the recordable contracts, the Court notes, first that all recordable contracts have been performed. Moreover, Plaintiffs do not claim breach of any rights under the recordable contracts but, rather, they seek to enforce the terms of the 1963 Contract. However, this Court finds that the provisions of the recordable contracts cited by the Area I Plaintiffs do not grant the Area I Plaintiffs a right to enforce the 1963 Contract. Further, this Court rejects Area I Plaintiffs' argument that 'a breach by the government of the 1963 contract is ipso facto a breach of each recordable contract."

7. With regard to the *Barcellos* Judgment, even if paragraph 3 of the Judgment confers standing, the issue remains whether a suit for money damages can be maintained in light of the Tucker Act 'requirements. The Court finds that the *Barcellos* Judgment evinces an express intent by both parties to render 43 U.S.C. 390uu inapplicable to suits to enforce the terms of the Judgment. Since the Area I Plaintiffs cannot invoke 43 U.S.C. 390uu to enforce the Judgment, the Area I Plaintiffs must point to another source to allow them to sue for money damages.

8. Since Area I Plaintiffs seek money damages that exceed the limits of the Little Tucker Act of $10,000, generally, only the Federal Court of Claims has jurisdiction over money damages in the amounts sought by the Area I Plaintiffs. The Area I Plaintiffs assert that a contract claim for money damages may be asserted

against the United States in a Federal district court "if there is an independent waiver of sovereign immunity." The Area I Plaintiffs assert that this "independent waiver" can be found in Paragraph 3 of the *Barcellos* Judgment. However, examining the provisions of the Judgment recited in Paragraph 3, this Court finds that none of those provisions provides a monetary remedy.

Therefore, the Court hereby ORDERS as follows:

1. The June 5, 1998, holding that Area I Plaintiffs are intended third-party beneficiaries is VACATED.

2. On the Tucker Act issue, whether jurisdiction exists to hear a contract claim for money damages in excess of $10,000 against the United States, the June 5, 1998, ruling is VACATED.

3. Area I's claims are DISMISSED for lack of subject matter jurisdiction or TRANSFERRED to the Federal Court of Claims.

4. Area I Plaintiffs shall, within ten (10) days following the date of service of the Court's Memorandum Opinion shall notify the Court as to whether the Plaintiffs wish to have their money claims transferred to the Federal Court of Claims.

IT IS SO ORDERED.

DATE: 5-8-00

/s/ Oliver W. Wanger
OLIVER W. WANGER
UNITED STATES DISTRICT JUDGE

[Certificate of Service Omitted]